

ORAL ARGUMENT NOT YET SCHEDULED
Case Nos. 18-1091 and 18-1153

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

First Student, Inc., a Division of First Group America
Petitioner/Cross-Respondent

v.

National Labor Relations Board
Respondent/Cross-Petitioner

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial
& Service Workers International Union, AFL-CIO, Local 9036
Intervenor

ON PETITION FOR REVIEW AND CROSS-APPLICATION FOR
ENFORCEMENT OF A DECISION AND ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

JOINT DEFERRED APPENDIX

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CERTIFICATE OF SERVICE

I hereby certify that, on this 8th day of February, 2019, I electronically filed a true and correct copy of the foregoing *Deferred Appendix* using the United States Court of Appeals for the District of Columbia Circuit's CM/ECF filing system, thereby sending notification of such filing to all counsel of record.

/s/ David A. Kadela

David A. Kadela

Attorney for Petitioner/Cross-Respondent

TAB 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7

In the Matter of:

FIRST STUDENT, INC., A DIVISION
OF FIRST GROUP AMERICA,

Respondent,

and

LOCAL 9036, UNITED STEEL, PAPER
AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION (USW),
AFL-CIO,

Charging Union,

and

SAGINAW SCHOOL DISTRICT,

Party in Interest.

Case No. 07-CA-092212

The above-entitled matter came on for hearing pursuant to notice, before **MARK CARISSIMI**, Administrative Law Judge, at **Saginaw Courthouse, 111 South Michigan Avenue, Room 200, Saginaw, Michigan, on Wednesday, July 24, 2013, at 10:00 a.m.**

A P P E A R A N C E S

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1		<u>I N D E X</u>				
2						
3	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
4						
5	Clint Bryant	29	92	133	155	--
6		85		150		
7						
8	Tonya DeVore	158	--	--	--	--
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1 Q. And how are you familiar with that company?

2 A. I am employed by First Student.

3 Q. And what is your position with First Student?

4 A. I am a school bus driver.

5 Q. Before working for First Student, where did you work?

6 A. I worked for Saginaw Public Schools.

7 Q. And what was your position with the Saginaw Public
8 Schools immediately before your hire with First Student?

9 A. I was a school bus driver.

10 Q. When did you begin working for the Saginaw Public School
11 District?

12 A. January of 2007.

13 Q. Are you a member of a union?

14 A. Yes.

15 Q. And which union?

16 A. The United Steelworkers.

17 Q. Currently are you a member of a particular local?

18 A. Yes, Local 9036.

19 Q. During your time with either Saginaw Public School
20 District or First Student, were you affiliated with another
21 Local of the United Steelworkers?

22 A. Yes. I was --

23 Q. I'm sorry, which Local was that?

24 A. Local 8410.

25 Q. Do you have any knowledge as to how you transitioned

1 from Local 8410 to Local 9036?

2 A. Yes. Our employment was with a public sector group, and
3 we were transitioning to a private sector group.

4 Q. Okay. So do you believe that Local 8410 represented
5 public sector employees?

6 A. Yes.

7 Q. And Local 9036, what type of employees does the
8 Steelworkers represent, public sector or private sector?

9 A. Public and private.

10 Q. Public and private?

11 A. Uh-huh.

12 Q. Okay. Do you have any position with the Union?

13 A. Yes. I am the unit president.

14 Q. And how long have you held the position of unit
15 president?

16 A. May of 2012.

17 Q. And what types of duties do you do as unit president?

18 A. We filed grievances, we conduct meetings, and represent
19 employees.

20 Q. Okay. When employed with the Saginaw Public School
21 District, did the Union and the school district have a
22 collective bargaining agreement?

23 A. Yes.

24 Q. I'd like to show you what has already been introduced as
25 General Counsel's Exhibit 2. I believe everyone has a copy

1 Q. BY MS. BRAZEAL: How many employees were present during
2 this meeting?

3 A. About 20.

4 Q. Did any employees ask any questions?

5 A. No.

6 Q. And was there anything else stated in this meeting that
7 you can recall?

8 A. No.

9 Q. How long did the meeting last?

10 A. Less than 10 minutes.

11 Q. So after this meeting that occurred in October 2011, did
12 you attend any other meetings with school district

13 representatives regarding the bus services being
14 subcontracted?

15 A. Not until February of 2012.

16 Q. And where was this meeting held?

17 A. This meeting was held at the transportation garage.

18 Q. And who attended the meeting?

19 A. It was required that all employees attend this meeting.

20 Q. By whom?

21 A. Mr. Bradley.

22 Q. Who's Mr. Bradley?

23 A. Mr. Bradley is the director of facilities.

24 Q. And about how many employees are present in this
25 meeting?

1 A. About 50 to 55.

2 Q. Fifty employees. Okay. And, now, did Mr. Bradley do
3 the speaking in this meeting? Was --

4 A. No.

5 Q. Who was present on behalf of the Saginaw School District
6 during this meeting?

7 A. Dr. Kelley Peatross and Jeffrey Goodwine.

8 Q. Okay.

9 MR. KADELA: I'm sorry, I didn't catch the second.

10 THE WITNESS: Jeffrey Goodwine.

11 Q. BY MS. BRAZEAL: And what was said during this meeting?

12 JUDGE CARISSIMI: Who's Mr. Goodwine?

13 THE WITNESS: He's the athletic director for the school
14 district.

15 JUDGE CARISSIMI: Okay.

16 Q. BY MS. BRAZEAL: What was said during this meeting?

17 JUDGE CARISSIMI: By whom?

18 THE WITNESS: We were handed -- oh.

19 JUDGE CARISSIMI: Well, the question was -- I don't know
20 who is talking. Who spoke at the meeting from the school
21 district?

22 THE WITNESS: Dr. Peatross.

23 JUDGE CARISSIMI: All right.

24 Q. BY MS. BRAZEAL: What did Dr. Peatross say during this
25 meeting?

1 MR. KADELA: Object to the extent that in advance it's
2 going to involve hearsay regarding First Student's plans.

3 MS. BRAZEAL: I think that this again goes to show what
4 was stated, not necessarily for the truth of the matter
5 asserted, and it also lays the foundation as to what will
6 come later as to more meetings with First Student and
7 Respondent, what the employees were believing similar to what
8 I stated a few minutes ago.

9 MS. REBHORN: May I also add again?

10 JUDGE CARISSIMI: Yes.

11 MS. REBHORN: This also shows what the school district's
12 intent was in moving forward with the subcontracting process.

13 JUDGE CARISSIMI: But the fact of the matter is it is
14 hearsay. It's a hearsay statement. Anything that this
15 representative said about what First Student told them is
16 hearsay, correct?

17 MS. REBHORN: This is -- I think if you'd allow the
18 testimony to proceed, we'll hear -- I mean we'll hear what
19 the district believed, and I don't think that that's hearsay.

20 JUDGE CARISSIMI: And how is that relevant to what I'm
21 deciding in this case?

22 MS. REBHORN: It lays the foundation for --

23 JUDGE CARISSIMI: Do you have anybody from the district
24 who is going to tell me what their understanding was? Do you
25 have anybody you're going to call from the district?

1 MS. BRAZEAL: I may have someone who I may call, but I
2 also want to just make a point on this, that what I'm trying
3 to go into is a timeline as to what occurred, and I think
4 that this meeting, the meeting in October, the meeting in
5 February, all of the meetings throughout this time period,
6 some which will also include First Student representatives as
7 you soon will hear.

8 JUDGE CARISSIMI: That's different --

9 MS. BRAZEAL: Right, I know.

10 JUDGE CARISSIMI: -- if there's First Student
11 representatives there.

12 MS. BRAZEAL: It all shows a timeline as to what
13 employees believed, and I think it's relevant background
14 information. It's background to show more of what the
15 allegations of the actual complaint are. So for those
16 reasons, I think that this testimony should be admitted, and
17 I should be allowed to proceed.

18 MS. REBHORN: Your Honor, may I add one more thing?

19 JUDGE CARISSIMI: One last statement.

20 MS. REBHORN: The evidence will also show that First
21 Student's both earlier conduct and subsequent conduct adopted
22 the information that's -- that the board, that the school
23 district communicated to the employees.

24 JUDGE CARISSIMI: Let me ask you this, Ms. Brazeal.

25 MS. BRAZEAL: Uh-huh.

1 JUDGE CARISSIMI: Are you introducing this to show based
2 upon whatever they said there was some notice given to this
3 employee or employees generally? Because I'm not going to
4 consider this for the truth of the matter asserted.

5 MS. BRAZEAL: Well, I --

6 JUDGE CARISSIMI: Nothing the school district said I'm
7 going to consider as binding on First Student. I want to
8 make that as clear as I can. If I let this in, I'm not in my
9 decision in any way going to give any weight to this as
10 binding upon First Student.

11 MS. BRAZEAL: I don't believe it is binding on First
12 Student. I think that it shows the timeline of events as to
13 what occurred from 2011 all the way through 2012, and it's
14 really critical because it, you have all these meetings
15 occurring and later with First Student, and it just shows --

16 JUDGE CARISSIMI: Well, I don't know if it's critical.

17 MS. BRAZEAL: -- what the employees --

18 JUDGE CARISSIMI: Because what's critical is what First
19 Student said.

20 MS. BRAZEAL: That's true. That's the most critical.

21 JUDGE CARISSIMI: That's what's critical in this case.

22 MS. BRAZEAL: Right.

23 JUDGE CARISSIMI: And I want everybody to understand
24 that's what's critical.

25 MS. BRAZEAL: Uh-huh.

1 JUDGE CARISSIMI: If you didn't understand it before,
2 that's my view.

3 MS. BRAZEAL: Right.

4 JUDGE CARISSIMI: So I'm going to let this in, but I
5 want this brief.

6 MS. BRAZEAL: Okay.

7 JUDGE CARISSIMI: I think it will give me at least some
8 background about these meetings, but I want to make it clear
9 that it is not in any way going to be considered as any kind
10 of an admission by First Student when the testimony is coming
11 from a school district representative who is not here
12 testifying, all right, because it is hearsay. There's no
13 question about it.

14 MS. BRAZEAL: Okay.

15 JUDGE CARISSIMI: You can answer the question, sir. If
16 you remember if. If not --

17 Q. BY MS. BRAZEAL: The question was what did Dr. Peatross
18 say?

19 A. Dr. Peatross had handed us another spreadsheet, and she
20 informed us that the district had in fact decided to go with
21 First Student back in October, but they still were hammering
22 out some details.

23 MR. KADELA: I didn't hear the end. His voice is
24 trailing that way, and I'm --

25 JUDGE CARISSIMI: Yeah. Could you repeat your answer?

1 can ask the next question, you'll see that it's --

2 JUDGE CARISSIMI: All right, go ahead and ask your
3 question.

4 Q. BY MS. BRAZEAL: I believe I just asked you if you were
5 aware of meetings occurred between October 2011 and February
6 2012?

7 A. Yes.

8 Q. Did you attend with First Student representatives?

9 A. No, I did not.

10 Q. You did not attend?

11 A. No.

12 Q. Okay. Why didn't you attend?

13 A. I was out of town.

14 Q. At any point did you attend a meeting with First Student
15 representatives and school district representatives?

16 A. Not until May 16th of 2012.

17 Q. What type of meeting occurred on May 16th, 2012?

18 A. This was a regularly scheduled board meeting, school
19 board meeting.

20 Q. To your knowledge are school board meetings open to the
21 public?

22 A. Yes.

23 Q. Why did you choose to attend this meeting?

24 A. Because transportation was on the agenda.

25 Q. When you say transportation, can you explain what you

1 meant, what you are referring to?

2 A. Transportation services, the agenda for school district
3 meetings is usually released before, so I've noticed that
4 transportation services, and there will be talk about the
5 outsource, and I wanted to attend.

6 Q. Okay. Was anyone from First Student present at this
7 meeting?

8 A. Yes, Mr. Kinsley.

9 Q. And who is Mr. Kinsley to your knowledge?

10 A. I believe he is the area development manager.

11 Q. Was anyone present on behalf of the Steelworkers?

12 A. Yes.

13 Q. And who was present?

14 A. Tonya DeVore.

15 Q. And what is her position with the Union?

16 A. She's a staff representative.

17 Q. Were any other employees present at this meeting?

18 A. Yes.

19 Q. About how many employees?

20 A. About six.

21 Q. And who were these individuals?

22 A. Venus Parham, Monyette Hatter, Albert Hanna,
23 Elizabeth Wilson, and Jarvisa Davis.

24 Q. I'm sorry, I didn't get the first name?

25 A. Jarvisa Davis.

1 Q. Okay.

2 A. And Mr. Kinsley took the podium to answer.

3 Q. And what did Mr. Kinsley say?

4 A. Mr. Kinsley said that specifically employees would
5 maintain their current wages.

6 Q. Were any other questions directed to Mr. Kinsley during
7 this meeting?

8 A. Yes. While Mr. Kinsley was at the podium, Alexis Thomas
9 asked a question about employee retention, if First Student
10 intended to hire the current employees employed by the school
11 district.

12 Q. Did Mr. Kinsley respond?

13 A. Yes.

14 Q. And what did he say?

15 A. Mr. Kinsley specifically said that, much like a school
16 district, employees would have to go through a background
17 check, a drug screen, and pass a physical.

18 Q. Did he indicate what would happen if employees met those
19 prerequisites?

20 A. Yes, they would be hired.

21 Q. Were any other questions directed towards Mr. Kinsley?

22 A. No, that was all.

23 Q. Okay.

24 A. Oh, yes, there was. I'm sorry.

25 Q. Okay. What other questions?

1 A. No.

2 Q. Okay. Did he identify any terms and conditions of
3 employment that may change?

4 A. No.

5 Q. Did the board vote during this meeting?

6 A. Yes.

7 Q. And what did the board vote on?

8 A. The board had voted to carry the superintendent's
9 recommendation.

10 Q. How long did this meeting last?

11 A. About four hours.

12 Q. And when did it end?

13 A. About 11:00.

14 Q. P.m.?

15 A. P.m.

16 Q. At the conclusion of this board meeting, what did you
17 believe the terms and conditions of employment would be once
18 First Student took over the bus service operations from
19 Saginaw School District?

20 MR. KADELA: Objection.

21 JUDGE CARISSIMI: Sustained.

22 Q. BY MS. BRAZEAL: At the conclusion of this meeting, did
23 you have an understanding as to what your terms and
24 conditions of employment would be if you were hired by First
25 Student?

1 Q. And what did he say when he approached you all?

2 A. He had put his arm around one of, I believe it was
3 Monyette Hatter, and said, "Don't worry, everything will be
4 fine," and at that time Ms. DeVore asked him if the Company
5 would recognize the Union, and Mr. Kinsley said, "Yes,
6 welcome to First Student."

7 Q. Did he say anything else during this meeting?

8 A. No.

9 Q. About how long did this gathering-slash-meeting last?

10 A. Less than five minutes.

11 Q. I lost my spot here. Did you report to work on
12 May 17th?

13 A. Yes.

14 Q. And what time did you report to work on that day?

15 A. About 5:30 a.m.

16 Q. And on that day, were there any staff meetings?

17 A. Yes.

18 Q. How many staff meetings occurred on that day?

19 A. Just one.

20 Q. How were you notified of that meeting?

21 A. Through Mr. Bradley, the director of facilities.

22 Q. Was the meeting mandatory or voluntary?

23 A. Mandatory.

24 Q. Did you attend the meeting?

25 A. Yes.

1 over to them.

2 Q. Okay. What happened at that point?

3 A. They handed out paperwork and packages of information.

4 Q. Okay. I'd like to show you what has already been
5 introduced into evidence as General Counsel's Exhibit 5. Can
6 you take a look at that document?

7 Do you recognize that document?

8 A. Yes.

9 Q. And is that what was handed to you on May 17th?

10 A. Yes.

11 Q. It is? Okay. And when this was handed to you all, what
12 was said about it?

13 A. Mr. Kellerman started the meeting and said, "Good
14 morning, welcome to First Student," and he was happy. I mean
15 he was happy. I mean he was, you know, this was the tone of
16 the meeting at that time, and he gave us this paperwork to
17 start looking over.

18 Q. Uh-huh.

19 A. And that was about it with that.

20 Q. Did he explain anything in this document?

21 A. Yes.

22 Q. And can you -- let me withdraw that question.

23 Did you review this on May 17th?

24 A. Yes.

25 Q. And what, when you reviewed it, did you notice if there

1 Q. BY MS. BRAZEAL: Okay. Moving on to page two of this
2 document, was there anything that stuck out to you on page
3 two?

4 A. Yes.

5 Q. And can you please explain?

6 A. The pay rates.

7 Q. And what was significant about the pay rates as
8 described on page two of this document?

9 A. There's something called a B hourly rate, and what
10 Mr. Kinsley had said the day before was that we were going to
11 maintain our current wages.

12 Q. Okay. With the Saginaw School District, were you
13 subject to a B hourly rate?

14 A. No.

15 Q. Just reviewing this document again, was there -- well,
16 do you recognize if there are any other differences between
17 the terms and conditions while employed at Saginaw and what's
18 the Saginaw Public School District and what's stated here in
19 this document?

20 A. Yes. The pay guarantee.

21 Q. Okay. And that's on page two. And what's different
22 about what's explained here in this document and what was in
23 place with the Saginaw School District?

24 A. With the school district we were guaranteed a total of
25 -- drivers were guaranteed 4.5 hours per day and the

1 JUDGE CARISSIMI: The third page. Okay. So it's now a
2 two-page document, correct?

3 MR. KADELA: With that, no objection.

4 JUDGE CARISSIMI: All right. Since that's resolved, the
5 GC-10 is admitted. It's a two-page document.

6 **(General Counsel's Exhibit 10 received in evidence.)**

7 Q. BY MS. BRAZEAL: Do you recall if you ever received a
8 copy of First Student's employee handbook?

9 A. Yes.

10 Q. And when did you receive a copy of that?

11 A. I believe it was mid-July of 2012.

12 Q. How did you come to receive that?

13 A. Through Mr. Kiraly.

14 Q. Kiraly. Okay. I'd like to show you, this one I believe
15 has been entered, this is General Counsel's Exhibit 6.

16 Respondent has a copy. Can you take a look at this document?
17 Do you recognize that?

18 A. Yes.

19 Q. And what is it?

20 A. This is the handbook.

21 Q. Did you have a chance to review -- have you reviewed the
22 employee handbook?

23 A. Yes.

24 Q. Are the terms in the employee handbook different or the
25 same than the terms in the contract between the Saginaw

1 that get into evidence and the one that the Respondent has
2 has all the language because the copy I have is incomplete.

3 MS. BRAZEAL: All right. My copy is incomplete too, and
4 I'm checking now, and I'll be able to make more copies --

5 JUDGE CARISSIMI: Okay. To make sure we have the --

6 MS. BRAZEAL: Right.

7 JUDGE CARISSIMI: -- the correct lines.

8 All right, do you need your copy back?

9 MS. REBHORN: You can keep it.

10 JUDGE CARISSIMI: All right. If you need it, it is
11 here, and you can use it.

12 MS. REBHORN: Okay.

13 JUDGE CARISSIMI: All right, does the Charging Party
14 have questions of Mr. Bryant?

15 MS. REBHORN: We do, Your Honor.

16 JUDGE CARISSIMI: You may proceed.

17 MS. REBHORN: Thank you.

18 **DIRECT EXAMINATION**

19 Q. BY MS. REBHORN: Hi, Mr. Bryant. What did Dan Kinsley
20 say about the hiring on May 16?

21 A. Mr. Kinsley, in response to Ms. Thomas' question, was
22 that the employees would be hired and they would transition
23 over to First Student as long as they passed the background
24 check, had a negative drug screen, and they took their
25 physical.

1 Q. And what did Mr. Meek or Mr. Kellerman say about hiring
2 on May 17th?

3 A. That we would need to submit our application but that
4 that was a formality.

5 Q. Did they say anything about other employment
6 requirements?

7 A. It was listed on the handout that they had given us.

8 Q. And what did the handout say?

9 A. In addition to a drug screen and the physical and the
10 background check, there was also a behind the wheel
11 evaluation and dexterity test.

12 Q. And what did Dan Kinsley say on May 16th about wages?

13 A. That was in response to Mr. Patterson's question about
14 what the wages would be, and Mr. Kinsley said that the
15 employees would maintain their current wages.

16 Q. And what did Mr. Meek or Mr. Kellerman say about wages
17 on May 17th if anything?

18 A. That they would be different.

19 Q. And did the handout that you received on May 17th say
20 anything about wages?

21 A. Yes, that was different from what we had heard on
22 May 16th.

23 Q. When you showed up to work at the beginning of the 2012
24 to 2013 school year, did you know what your wages would be?

25 A. Can you repeat when?

1 Q. When you first showed up to work at the beginning of the
2 school year that just ended, did you know what you'd be
3 making?

4 A. No.

5 Q. Why was that?

6 A. Well, on May 16th we were told that we would maintain
7 our wages, but on May 17th we were told something different,
8 so that created confusion amongst myself.

9 Q. And moving -- I have one more question about May 17th.
10 When Mr. Kellerman made his comment about union recognition,
11 what exactly did he say?

12 A. He said that the Company was labor friendly and that
13 they had a master agreement with the Teamsters Union and that
14 he would recommend that we join the Teamsters Union.

15 Q. And had you been hired at this point?

16 A. I believed so.

17 Q. Had you received wages from First Student at that point?

18 A. No.

19 Q. Did you know if anyone had started receiving wages from
20 First Student at that point?

21 A. I don't believe so.

22 Q. Okay. I'm going to ask you some questions about your
23 local union structure now.

24 A. Uh-huh.

25 Q. When did the change from 8410 to 9036 take place?

1 Q. BY MS. REBHORN: Why did the number of the local change?

2 A. Because we were moving from a public sector union to
3 someone that had experience with the financial paperwork
4 associated with a private -- in addition to a public union.

5 Q. So 9036 had experience with filing paperwork for private
6 sector local --

7 A. Yes.

8 Q. -- private sector units?

9 A. Yes.

10 MS. REBHORN: Okay. Those are all my questions. Thank
11 you.

12 JUDGE CARISSIMI: How do you know that the Local 9036
13 had that experience with public sector -- I'm sorry, private
14 sector?

15 THE WITNESS: Private sector. In the United
16 Steelworkers, we do things that are called president's
17 meeting, and I am privileged to go to those meetings, so you
18 have the ability to meet different people, and our previous
19 local president, they had never done that, but at least for
20 the Steelworkers in Saginaw County, we know who is a public
21 sector and who is a private sector.

22 JUDGE CARISSIMI: All right. How did you inform the
23 members of the bargaining unit that the locals -- you were
24 now going to be part of a different local?

25 THE WITNESS: How did I inform them?

1 JUDGE CARISSIMI: Yes.

2 THE WITNESS: I spoke to them.

3 JUDGE CARISSIMI: Okay, how? At a meeting?

4 THE WITNESS: Yeah.

5 JUDGE CARISSIMI: All right. What'd you tell them?

6 THE WITNESS: Because of the paperwork associated with

7 that, no one in 8410 knew how to -- knew anything about that.

8 I mean it's a little bit different, and I am not very

9 knowledgeable about the paperwork myself so, versus us

10 getting a crash course in training, it would be easier for us

11 just to move over to a local who has experience with that.

12 JUDGE CARISSIMI: Was there any document that reflected

13 the transition of this bargaining unit into a different

14 local?

15 THE WITNESS: Yes.

16 JUDGE CARISSIMI: Do you have copies of that document?

17 THE WITNESS: I believe I have it in an e-mail. I'm not

18 100 percent sure.

19 MR. KADELA: I didn't hear his answer.

20 JUDGE CARISSIMI: Could you repeat your answer?

21 THE WITNESS: The question --

22 JUDGE CARISSIMI: He believes he had it in an e-mail;

23 he's not quite sure.

24 Remember, sir, you've got to keep your voice up.

25 THE WITNESS: Sorry.

1 JUDGE CARISSIMI: I know you're being very polite --

2 THE WITNESS: I'm talking to you --

3 JUDGE CARISSIMI: -- and you're looking at me, but
4 remember, Mr. Kadela and everybody on that side needs to hear
5 you. So just keep your voice up.

6 All right, who'd you get the e-mail from?

7 THE WITNESS: Our Bay City office.

8 JUDGE CARISSIMI: When you say "our"?

9 THE WITNESS: United Steelworkers.

10 JUDGE CARISSIMI: Okay. Was there a particular staff
11 representative that you worked with on this?

12 THE WITNESS: Yes, Ms. DeVore.

13 JUDGE CARISSIMI: Ms. Rebhorn, are you going to have
14 further evidence, or are you going to have Ms. DeVore testify
15 about this?

16 MS. REBHORN: Yes, Your Honor.

17 JUDGE CARISSIMI: Okay. And that really goes to then
18 it's not going to be hearsay because we're going to have
19 apparently someone from the Union on the other side of this
20 discussion, correct?

21 MS. REBHORN: That's correct, Your Honor.

22 JUDGE CARISSIMI: All right. All right, those are the
23 questions I have, and particularly since there's going to be
24 another witness on that, I won't ask any more questions about
25 that issue.

1 to say that that does say "things."

2 JUDGE CARISSIMI: All right.

3 MS. BRAZEAL: That's why I believe. I don't know what
4 anyone else would read that to be.

5 JUDGE CARISSIMI: Ms. Rebhorn, how about yourself?

6 MS. REBHORN: I believe it says "All of these things."

7 JUDGE CARISSIMI: All right. Very good.

8 MR. KADELA: Okay, thank you.

9 Q. BY MR. KADELA: Mr. Bryant, Mr. Canfield provided you
10 with an opportunity to read your affidavit before you signed
11 it, correct?

12 A. Correct.

13 Q. And as you went through it, you initialed each page of
14 the affidavit?

15 A. That is correct.

16 Q. And then signed it at the end?

17 A. That is correct.

18 Q. At the board meeting on May 16, did Board Member
19 Thompson ask on behalf of the board if the Company would
20 recognize the Union?

21 A. Ms. Thompson asked a question about union recognition,
22 that's correct.

23 Q. And Mr. Kinsley said yes?

24 A. Mr. Kinsley said yes, that they would recognize the
25 Union.

1 Q. And he added to that if the Company hired 51 percent of
2 the district employees?

3 A. No, Mr. Kinsley did not follow up anything after saying
4 yes the Company would recognize the Union.

5 Q. At the meeting on May 17th, Mr. Kellerman said that the
6 Company would recognize the Union?

7 A. That is correct.

8 Q. And did he say that it would recognize the Union if it
9 hired 51 percent or majority of the employees?

10 A. I don't recall.

11 Q. Did you ever hear anyone from First Student say that
12 recognition was conditioned upon the Company hiring a
13 majority of the employees, whether it was 50 percent plus one
14 or 51 percent?

15 A. No, each time I heard a Company representative or a
16 manager say anything about recognizing the Union, it was yes,
17 they would recognize the Union.

18 Q. And according to you, Mr. Kellerman encouraged the
19 employees to select the Teamsters as their representative?

20 A. What Mr. Kellerman said was that First Student was a
21 labor-friendly company and that they had a master agreement
22 with the Teamsters Union and he would recommend that we join
23 the Teamsters Union.

24 Q. But you never heard him or any other representative talk
25 about a majority or 50 percent plus one?

1 A. I don't recall anything about that.

2 MR. KADELA: Your Honor, may I approach again?

3 JUDGE CARISSIMI: You may.

4 Q. BY MR. KADELA: Mr. Bryant, I'd like to refer you to
5 page four of your affidavit at the bottom. It says, quote,
6 referring to the May 17 meeting, "It was after we discussed
7 these things that I asked if they would recognize the Union,
8 and Kellerman said yes. He said they work with other unions,
9 and when they take over a district, they always employ a 50
10 percent plus one," closed quote.

11 After the board meeting on May 16, you and Ms. DeVore
12 and several other members from the unit convened outside the
13 building, correct?

14 A. We met outside, yes, in the courtyard.

15 Q. And Mr. Kinsley walked out of the building?

16 A. The ward building, yes.

17 Q. And did he walk towards you?

18 A. Yes. Mr. Kinsley approached us.

19 Q. Were you in the path to where his car was, or did he go
20 out of his way, could you tell?

21 A. No. He had veered off.

22 Q. Was there anybody with him?

23 A. No, it was Mr. Kinsley.

24 Q. And Ms. DeVore, upon his approaching, asked and said,
25 "Is the Company going to recognize the Union?"

1 A. Yes. After Mr. Kinsley had approached us, he had placed
2 his hand on one of my other employees, and he told her,
3 "Don't worry, everything will be fine," and after that
4 Ms. DeVore asked him if they would recognize the Union, and
5 Mr. Kinsley said, "Yes, we will recognize the Union."

6 Q. And that's the same question that Ms. DeVore and you and
7 the others heard being asked during the meeting?

8 A. Yes.

9 Q. And wasn't it again mentioned that if the Company hired
10 51 percent or 50 percent plus one of the employees?

11 A. I asked the question on May 17th if the Company would
12 recognize the Union, and Mr. Kellerman said yes, that the
13 Company would recognize the Union.

14 Q. I was still on the 16th outside the building. Isn't it
15 true that Mr. Kinsley mentioned that the Company would
16 recognize the Union if they hired 50 percent plus one?

17 A. That was not what was stated with myself, Ms. DeVore,
18 and about five of the other employees there. What
19 Mr. Kinsley said was that the Company would recognize the
20 Union.

21 Q. Were you aware or had you been made aware that the
22 Company would have an obligation to recognize and bargain
23 with the Union only if it hired a majority of the district's
24 employees?

25 A. Well, on May 17th that was --

1 transportation aspect of the school district's operation?

2 A. I believe Mr. Kiraly worked for Saginaw Public Schools
3 for 25 to 30 years.

4 Q. And when did he last work for Saginaw Public Schools?

5 A. I'm unsure on a date. I want to be honest, but I
6 can't -- I don't know the exact year.

7 Q. Well, you don't need to.

8 A. Okay.

9 Q. Let me ask it this way, it will be easier to do: It was
10 at least a year or two before the transition?

11 A. Yes, Mr. Kiraly had retired from the school district.

12 Q. Mr. Bryant, I'm going to show you again General Counsel
13 Exhibit Number 8. That's the offer letter you received?

14 A. Yes, I received this in the mail.

15 JUDGE CARISSIMI: Now, what -- okay. Wait for a
16 question.

17 THE WITNESS: Okay.

18 Q. BY MR. KADELA: The second paragraph indicates that your
19 rate of pay while driving would be 15.23 an hour?

20 A. That is correct.

21 Q. And that's what you have been paid?

22 A. Yes, that was my hourly wage.

23 Q. And it says \$10 per hour for all non-driving duties?

24 A. That's what it says.

25 Q. And that's what you've been paid?

1 quote.

2 I'd like for you to just read that paragraph and let me
3 know if you agree that's what that states, starting at the
4 bottom of page four and on to --

5 JUDGE CARISSIMI: Are you referring the witness to the
6 paragraph that you read?

7 MS. BRAZEAL: Yes, to the paragraph I just read.

8 JUDGE CARISSIMI: All right.

9 MS. BRAZEAL: At the very bottom.

10 Q. BY MS. BRAZEAL: Do you understand that paragraph as
11 indicating that recognition of the Union would be conditioned
12 upon the hiring of 50 percent plus one?

13 MR. KADELA: Objection.

14 Q. BY MS. BRAZEAL: Of employees?

15 JUDGE CARISSIMI: Sustained.

16 Q. BY MS. BRAZEAL: What do you -- when you read your
17 affidavit, did you believe that particular statement to be
18 correct?

19 A. I agree with this statement here, that they would
20 recognize the Union, and my belief --

21 Q. That's all I need.

22 A. Okay.

23 Q. Do you know how many employees were hired, how many
24 former employees from the Saginaw School District were
25 eventually hired by First Student?

1 A. I believe all but a few.

2 Q. All but a few?

3 A. Yeah.

4 Q. A few. Can you quantify that in any way?

5 A. Maybe three or four.

6 Q. And how many employees were in the bargaining unit as of
7 May of 2012?

8 A. Maybe 50 to 55.

9 Q. I want to show you the complaint in this hearing because
10 it's actually introduced in evidence as General Counsel's
11 Exhibit 1. It's part of the formal papers. This is my copy
12 of it. This is the complaint. And you can take a look at
13 it? Have you seen that document before? You can start at
14 page one.

15 A. Yes.

16 Q. Do you recognize that as the complaint that issued in
17 this case?

18 A. Yes.

19 Q. If I may have that back.

20 Now, I want to draw your attention to paragraph 13.

21 A. Okay.

22 MS. BRAZEAL: Just for the record, paragraph 13 says,
23 "On or about May 17th, 2002, Respondent" --

24 JUDGE CARISSIMI: We can all read it, Ms. Brazeal.

25 MS. BRAZEAL: You can read it. Okay.

1 A. Yes, that they would recognize the Union.

2 Q. And was that before or after the school year started and
3 everyone started work?

4 A. That was prior to.

5 Q. I'm now going to ask you about the May 17th meeting.

6 A. Okay.

7 MS. REBHORN: Mr. Kadela read part of your affidavit.
8 It says -- Your Honor, may I just read this part to locate
9 the witness?

10 JUDGE CARISSIMI: Well, first of all, what page are you
11 on?

12 MS. REBHORN: It's page eight.

13 JUDGE CARISSIMI: All right. And if you're putting part
14 of the affidavit, reading part of it for context --

15 MS. REBHORN: I'm actually only reading what Mr. Kadela
16 read just so the witness knows what I'm referring to.

17 JUDGE CARISSIMI: Oh, you have a question after that.

18 MS. REBHORN: Correct.

19 JUDGE CARISSIMI: All right, fine. You can do that.

20 Q. BY MS. REBHORN: So your affidavit says, "I received a
21 handbook from First Student. I received this on 5/17/12 from
22 Kiraly, I think." What did you get at the 5/17/12 meeting
23 with First Student? What did you receive?

24 A. I believe I received a orientation book. Not a --
25 there's two separate books from, that we received from --

1 Union?

2 A. Yes, I'm employed by the United Steelworkers.

3 Q. And what's your position?

4 A. I'm a staff representative.

5 Q. When did you begin your employment with the Union?

6 A. In July of 2006.

7 Q. As staff representative, what are your duties?

8 A. I negotiate contracts. I do the grievance procedure,
9 arbitration.

10 Q. At any point that you're aware, did the Union, I'm now
11 referring to the United Steelworkers Union, have a collective
12 bargaining relationship with the Saginaw Public School
13 District?

14 A. Yes, we did.

15 Q. And did that relationship cover bus drivers and bus
16 monitors?

17 A. Yes, it did.

18 Q. I'd like to show you as General Counsel's Exhibit 2 --
19 actually the Judge may have a non-cutoff copy.

20 JUDGE CARISSIMI: I do. Would you like me to give that
21 to the witness?

22 MS. BRAZEAL: Yes, I would.

23 JUDGE CARISSIMI: There you go.

24 Q. BY MS. BRAZEAL: Once you've had an opportunity to look
25 through it, just let me know if you recognize that.

1 THE WITNESS: In July of 2011 they had invited me to
2 attend a meeting where they were going to consider bids by
3 various vendors.

4 JUDGE CARISSIMI: And when you say "they," do you mean
5 Dr. Peatross?

6 THE WITNESS: Yeah, the school board, yes.

7 Q. BY MS. BRAZEAL: And these vendors were to provide what
8 services?

9 A. Transportation services.

10 Q. And did different vendors attend this meeting?

11 A. Yes.

12 Q. And who were those vendors?

13 A. On the day that I was present, First Student and
14 Dean Transportation.

15 Q. Okay. Do you recall who was present on behalf of First
16 Student?

17 A. Dan Kinsley.

18 Q. Did he make any kind of presentation on that day?

19 A. Yes, he did.

20 Q. And what did he say?

21 A. Can you narrow the question a little bit? I mean, he
22 said a lot.

23 Q. Okay. Did he -- what did he say First Student would be
24 able to provide to Saginaw School District?

25 A. He said that First Student would be able to hire all of

1 their employees, and that they would, if they could reach an
2 agreement with the Employer, they would be willing to
3 purchase buses, that they would maintain wages for the
4 employee group, that they would offer an Aetna medical
5 insurance, which was comparable to their health insurance,
6 that they had 401(k).

7 JUDGE CARISSIMI: Comparable to what?

8 THE WITNESS: To the insurance that they had as school
9 district employees.

10 JUDGE CARISSIMI: Okay, "they" meaning --

11 THE WITNESS: Medical insurance.

12 JUDGE CARISSIMI: -- the employees, correct?

13 THE WITNESS: Yes, that the employees had when they were
14 employed with Saginaw Schools.

15 JUDGE CARISSIMI: And let me ask a question. I just
16 want to make sure I understand. When was this meeting? When
17 did this take place?

18 THE WITNESS: This was late July of 2011.

19 JUDGE CARISSIMI: Okay. Very good. Thank you.

20 Q. BY MS. BRAZEAL: Did he say anything else related to
21 terms and conditions of employment of employees if First
22 Student were to receive the contract with Saginaw School
23 District?

24 A. I was given an opportunity to ask questions, and I asked
25 him specifically if he would recognize the Union.

1 Q. And did he respond?

2 A. He said he would recognize the Union.

3 Q. Do you recall if he said anything about hiring
4 requirements?

5 A. He did.

6 Q. And what did he say in that regard?

7 A. He said that if -- the employees would be hired if they
8 would meet their hiring practices, which consisted of a CDL,
9 a drug screen and a physical, and a background check.

10 Q. What does CDL stand for?

11 A. Commercial driver's license. And that was only to the
12 employees that that was applicable to.

13 Q. Did he mention that there would be any other hiring
14 requirements besides the background checks, drug tests,
15 physical, and -- excuse me, I --

16 A. Go ahead.

17 Q. Okay, and other requirements associated with the CDL?

18 A. He did not.

19 Q. Okay. At that time the bus drivers and bus monitors
20 were employees of the Saginaw Public School District; is that
21 correct?

22 A. Repeat the question?

23 Q. As of July 2011, were the bus drivers and monitors
24 employed by the Saginaw Public School District?

25 A. They were.

1 Q. And do you know if those employees were subject to
2 background checks?

3 A. They were.

4 Q. And how about drug tests?

5 A. Yes.

6 Q. Did the bus drivers have to maintain a commercial
7 driver's license?

8 A. Yes.

9 Q. And were they required by the Saginaw Public School
10 District to have a physical?

11 A. The CDL requires that.

12 Q. The CDL requires that. Okay. And how do you know these
13 things?

14 A. I know that -- I used to be a schoolteacher, so I know
15 that public school employees are all susceptible to having to
16 take a background check. I know that through my work that
17 I've done, I represent a lot of road commissions and a lot of
18 school bus drivers, I know that they have to have a CDL and
19 they have to have, with that CDL comes a physical. What was
20 the other question? Background checks, drug screens. As
21 part of the CDL program, the state actually requires random
22 drug testing for CDL drivers, so I know that too.

23 Q. And did you know that the particular bus drivers and bus
24 monitors employed by Saginaw School District, that they have
25 to meet those requirements or undergo those -- did the

1 particular employees employed by the Saginaw School District,
2 were they subject to the drug test, the CDL requirements, and
3 the physicals?

4 A. Yes.

5 Q. Okay. About, this is going to the meeting in late July
6 of 2011, about how long was Mr. Kinsley's presentation?

7 A. About an hour.

8 Q. Did you ask any other questions of Mr. Kinsley besides
9 whether he would recognize the Union?

10 A. When he said if they meet our hiring practices, we would
11 hire them, I said, "Well, what are your hiring practices,"
12 and that's when he said the things that he said, CDL, drug
13 screen, physical, background check.

14 Q. Okay. Did you attend a school board meeting on
15 May 16th, 2012?

16 A. Yes, I did.

17 Q. And why did you attend that meeting?

18 A. Dr. Peatross had indicated that transportation would be
19 on the agenda.

20 Q. Okay. And did she -- she told you this before that
21 meeting?

22 A. Yes.

23 Q. And are these meetings, are they open to the public?

24 A. Yes, they are.

25 Q. And did any employees, bus drivers or monitors, attend

1 Q. Was your proposal considered?

2 A. Briefly.

3 Q. Was any action taken on that proposal?

4 A. Yes.

5 Q. On the --

6 A. No.

7 Q. -- Union's proposal?

8 A. No.

9 Q. No?

10 A. No.

11 Q. Okay. Did Kinsley make any remarks after you made your
12 remarks with respect to what you just testified to?

13 A. Yes.

14 Q. And what did he say?

15 A. He said that the board needed to take swift action in
16 order to make sure that there would be a smooth transition.

17 Q. Okay. How long did Kinsley speak at the podium on
18 May 16th? How long was he up there?

19 A. I'm not sure. Less than an hour.

20 Q. Okay. At any time did Kinsley identify any terms and
21 conditions of employment that would change if First Student
22 was awarded the contract?

23 A. No.

24 Q. Did the school district vote on that day regarding the
25 contract between First Student and the school district?

- 1 A. Yes.
- 2 Q. What did he say?
- 3 A. He said, "Don't worry. Everything will be okay. This
4 is going to be smooth." He said, "You have nothing to worry
5 about." He understood why we were hesitant, but he said
6 everything was going to be okay.
- 7 Q. Did he mention anything about the terms and conditions
8 of employment for employees?
- 9 A. He said, "Everything will be the same."
- 10 Q. Okay, did he identify any terms and conditions of
11 employment that may change?
- 12 A. He did not.
- 13 Q. Did any employees ask any questions during that meeting?
14 During that gathering in the parking lot?
- 15 A. I'm not sure if any employees did, but I did.
- 16 Q. And what did you ask?
- 17 A. I asked specifically, "Will you recognize the Union?"
- 18 Q. And what did he say?
- 19 A. He said, "Yes, we will." He said, "We're union
20 friendly." He said, "We have a master agreement with the
21 Teamsters." He said, "It's not a problem."
- 22 Q. Did he condition that statement upon anything? Well, I
23 should say this: Did he qualify his statement as to whether
24 the --
- 25 A. He did not.

1 Q. -- First Student would recognize the Union?

2 A. No, he did not.

3 MS. BRAZEAL: Okay. I believe I've passed out -- I'm
4 going to show you what's been actually introduced as General
5 Counsel 17. It's the contract between the Saginaw School
6 District and First Student. I believe everyone has a copy of
7 it.

8 Do you have a copy of it, Judge?

9 JUDGE CARISSIMI: I do not.

10 MS. BRAZEAL: You don't? Okay. All right.

11 JUDGE CARISSIMI: Is that the one you were going to work
12 from? That's okay.

13 MS. BRAZEAL: I have another copy. Did I pass out
14 copies -- let me get my copy.

15 JUDGE CARISSIMI: All right. Let's go off the record.
16 (Off the record.)

17 JUDGE CARISSIMI: Back on the record.

18 You may proceed.

19 MS. REBHORN: Your Honor, I just, I wanted to mention to
20 Counsel for the General Counsel, we have one, we brought one,
21 so --

22 MS. BRAZEAL: Okay.

23 Q. BY MS. BRAZEAL: Ms. DeVore, have you seen what's been
24 marked as General Counsel's Exhibit 17?

25 A. Yes.

1 THE WITNESS: They were calling me and telling me they
2 weren't being hired. They were calling me and telling me
3 that there was two wage rates. They were calling me and
4 telling me that they were being told they were at-will
5 employees.

6 Q. BY MS. BRAZEAL: Okay. Did you request to bargain with
7 First Student?

8 A. I did.

9 Q. And when did you make your first request?

10 A. Middle of May, I believe May 18th.

11 Q. And was this request verbal or was it in writing?

12 A. This one was in writing.

13 Q. Okay. I'd like to show you what's been marked for
14 identification as General Counsel's Exhibit 11. It should be
15 11(a) and 11(b).

16 **(General Counsel's Exhibit 11(a) and 11(b) marked for**
17 **identification.)**

18 MR. KADELA: I'm sorry. I have GC-11, 11(a), and 11(b);
19 is that right?

20 MS. BRAZEAL: GC-11(a) and 11(b) -- I think I may have
21 given you an extra copy of 11(a).

22 MR. KADELA: Yeah.

23 MS. BRAZEAL: 11(a). 11(b).

24 Q. BY MS. BRAZEAL: Ms. DeVore, do you recognize these
25 documents?

1 A. I do.

2 Q. And what are those?

3 A. This is the request to bargain that I sent to First
4 Student.

5 Q. Were these two documents submitted together?

6 A. Yes.

7 Q. And how were these documents sent?

8 A. They were sent to Dan Kinsley at the address listed.
9 They were also -- and that was by certified mail, and they
10 were sent to Doug Meek by regular mail at a different
11 address.

12 Q. Now, did Mr. Kinsley respond to this letter?

13 A. He did not.

14 MS. BRAZEAL: Before we go forward, I would like to move
15 for admission of General Counsel's Exhibit 11(a) and 11(b).

16 JUDGE CARISSIMI: Is there any objection to General
17 Counsel Exhibit 11(a) or (b)?

18 MR. KADELA: No, Your Honor.

19 JUDGE CARISSIMI: GC-11(a) and (b) are admitted.

20 **(General Counsel's Exhibit 11(a) and 11(b) received in**
21 **evidence.)**

22 Q. BY MS. BRAZEAL: Okay, you said Mr. Kinsley did not
23 respond?

24 A. He did not.

25 Q. Now, did you also e-mail a copy of these documents to

1 representatives of First Student?

2 A. Yes, I did.

3 (General Counsel's Exhibit 12 marked for identification.)

4 Q. BY MS. BRAZEAL: And I'd like to, I'm going to show
5 what's been marked for identification as General Counsel's
6 Exhibit 12. Do you recognize that document?

7 A. Yes, I do.

8 Q. And what is it?

9 A. This is the e-mail that I sent along with the
10 attachments to Mr. Kinsley and Mr. Meek.

11 Q. And what were the attachments?

12 A. FMCS Form 7, a letter to Dr. Jenkins regarding the
13 transportation outsourcing, and contract negotiations
14 information request.

15 Q. Were these attachments the same as General Counsel's
16 Exhibit 11(a) -- well, actually Exhibits 11(a) and 11(b)

17 A. I'm not sure.

18 MS. BRAZEAL: I'd like to hold off on entering the
19 exhibit at this time.

20 JUDGE CARISSIMI: That's fine.

21 Q. BY MS. BRAZEAL: Okay, you mentioned that you sent
22 letter by mail to Doug Meek, the same letter -- you
23 that you had sent General Counsel's Exhibit 11(a) and
24 to Doug Meek?

25 A. Yes.

1 Q. Okay. And at any point did you speak to Mr. Meek about
2 your May 18th letter? Or just at any point did you speak to
3 Mr. Meek about your request to bargain?

4 A. I did.

5 Q. And when did you speak to him on the first occasion?

6 A. Shortly after I sent the opener out.

7 Q. And what are you referring to when you're saying the
8 opener?

9 A. This May 18th letter.

10 Q. Okay. Shortly after, is that days, weeks?

11 A. Within two weeks.

12 Q. And, I'm sorry, you spoke to him by phone; is that
13 correct?

14 A. Yes.

15 Q. And what did he say when you spoke to him?

16 A. He told me that he would not be handling the
17 negotiations, that Audrey Adams would be doing that.

18 Q. Okay. Did he tell you what Audrey Adams' position was?

19 A. He may have. I don't recall.

20 Q. Okay. Did you contact Ms. Adams?

21 A. I did.

22 Q. And when was the first time that you spoke to Ms. Adams?

23 A. Within two weeks of Doug Meek giving me her --

24 Q. Contact information? You said -- okay. So then -- just
25 so the, I don't know if the court reporter picked that up, so

1 you spoke to Ms. Adams within two weeks of --

2 A. Initial calls were made right away, but then you played
3 phone tag and then, you know, so that's why I'm saying within
4 two weeks of me talking to Doug, Audrey and I had connected.

5 Q. Okay. When did you first make the phone call to
6 Audrey Adams?

7 A. Right after I got off the phone with Doug.

8 Q. The same day?

9 A. Uh-huh.

10 Q. And how long after you made the initial phone call did
11 you speak to Ms. Adams?

12 A. Within two weeks.

13 Q. Within two weeks. Okay. And when you spoke to her,
14 what did you say?

15 A. I requested to set up some dates for bargaining.

16 Q. Uh-huh.

17 A. I told her that I believe it was my position that we
18 would start with the labor agreement where we're at, and if
19 there was anything that did not work for them, if she would
20 identify that. I would work to discuss that with her.

21 Q. What, if anything, did she say in response?

22 A. She asked me if I would send her a copy of the labor
23 agreement.

24 Q. Uh-huh.

25 A. And I told her I would.

1 Q. Uh-huh. And did you do that?

2 A. I did.

3 Q. And how did you send the copy of the labor agreement to
4 her?

5 A. By e-mail.

6 **(General Counsel's Exhibit 13 marked for identification.)**

7 Q. BY MS. BRAZEAL: I'd like to show you what's been marked
8 for identification as General Counsel's 13. Do you recognize
9 that document?

10 A. Yes, I do.

11 Q. And what is it?

12 A. It says it was -- oh, what is it? It's an e-mail I sent
13 to Audrey Adams.

14 Q. And what was the attachment to the e-mail you sent?

15 A. The Saginaw Public School's contract.

16 Q. Is that referring to the collective bargaining
17 agreement?

18 A. Yes.

19 MS. BRAZEAL: I'd like to move for the admission of
20 General Counsel's Exhibit 13.

21 JUDGE CARISSIMI: Any objection to GC-13?

22 MR. KADELA: No objection.

23 JUDGE CARISSIMI: GC-13 is admitted.

24 **(General Counsel's Exhibit 13 received in evidence.)**

25 Q. BY MS. BRAZEAL: Did Ms. Adams, did she respond to your

1 June 13th e-mail?

2 A. I don't believe so.

3 Q. When did you speak to Ms. Adams again after mid-June
4 2013? Mid-June 2012? I'm sorry.

5 A. Did I speak to her after?

6 Q. Yes. Well, let me ask the question this way: After you
7 spoke to her and she told -- and you -- after you spoke to
8 her and you told her that you would send her a copy of the
9 contract, did you speak to her again?

10 A. Eventually.

11 Q. When was the next time that you spoke to her?

12 A. November.

13 Q. So between June, and I'm using that date because that's
14 the date that you sent the e-mail to her, and November 2012,
15 did you attempt to contact Ms. Adams?

16 A. I did.

17 Q. And how were these attempts made?

18 A. By phone.

19 Q. Were you leaving messages with her?

20 A. Yes.

21 Q. And what did those messages say?

22 A. There was several messages.

23 Q. Okay.

24 A. But every one of the messages I urged her to call me, I
25 needed to speak with her.

1 Q. Okay. So after attempting -- well, about how many times
2 did you attempt to -- how many times did you contact
3 Ms. Adams between June 2012 and November 2012?

4 A. About five.

5 Q. And were all of these contacts made by phone?

6 A. Yes.

7 Q. And at any point after you made your initial contacts
8 with Ms. Adams, did you come to speak to another First
9 Student representative regarding scheduling bargaining dates?

10 A. Yes.

11 Q. And who did you come to speak to?

12 A. A gal by the name of Kristen Huening.

13 Q. And how did you get in contact -- well, how did you know
14 to contact her?

15 A. After not successfully reaching Ms. Adams, I attempted
16 to contact somebody, anybody, at their facility in
17 Cincinnati, I called their corporate offices, got a
18 switchboard, and they weren't very helpful. I then asked
19 Clint to put pressure on Rick Kellerman and those folks when
20 they were coming to see them to get a name for me, and he
21 gave me the name of Kristen Huening.

22 Q. When you said "he," who are you referring to?

23 A. Clint.

24 JUDGE CARISSIMI: And that's Clint Bryant?

25 THE WITNESS: Yes. And then I should say after Clint

1 gave me the name, then John Kiraly also sent me that name.

2 Q. BY MS. BRAZEAL: And had you been in contact with
3 Jenkins about setting up bargaining dates or --

4 A. I had not.

5 Q. Then how did John Kiraly come to give you the name of
6 Kristen Huening?

7 A. Clint was pressuring him to get a name.

8 Q. And so --

9 MR. KADELA: Objection.

10 JUDGE CARISSIMI: I'm going to sustain it.

11 MS. BRAZEAL: Okay.

12 Q. BY MS. BRAZEAL: Once you were told about
13 Kristen Huening, did you take any action to reach out to her?

14 A. I did.

15 **(General Counsel's Exhibit 15 marked for identification.)**

16 Q. BY MS. BRAZEAL: This is out of order. I'm going to
17 show you what's been marked for identification as General
18 Counsel's Exhibit 15. Do you recognize that document?

19 A. I do.

20 Q. And what is that document?

21 A. This is a similar letter to the May 18th letter; only
22 this one is addressed to Kristen Huening.

23 Q. Did you send that letter to Kristen Huening?

24 A. I did.

25 MS. BRAZEAL: I'd like to move for the admission of

1 MR. KADELA: None.

2 JUDGE CARISSIMI: GC-14 is admitted.

3 **(General Counsel's Exhibit 14 received in evidence.)**

4 Q. BY MS. BRAZEAL: With respect to the letter that you
5 sent to Mr. Kiraly, General Counsel's Exhibit 14, did you
6 receive a response from him?

7 A. Not with respect to the letter, no.

8 Q. Regarding the General Counsel's 15, the letter sent to
9 Ms. Huening, did you receive a response from her?

10 A. I did.

11 Q. And when did you receive that response?

12 A. Some time in that timeframe. Within a couple of weeks
13 of that date.

14 Q. Okay. And was this response by -- how was his response
15 made?

16 A. By phone.

17 Q. Okay. Did she initiate that contact, or who initiated
18 that contact?

19 A. I initiated the contact, and then she returned the call.

20 Q. So when you finally spoke to her, what did you say?

21 A. I asked when we could start negotiations, and she
22 indicated that she is not going to be handling the
23 negotiations. She indicated that she didn't know why
24 John Kiraly gave me her name, but that she was an EEOC
25 attorney and she would be forwarding that request to somebody

1 else in her office.

2 Q. Okay. Did she say who that person was?

3 A. She put me in contact with Raymond Walther.

4 Q. Okay. And did you contact Mr. Walther?

5 A. I did.

6 Q. And when did you first contact him?

7 A. By e-mail right after I got the information from
8 Kristen Huening.

9 **(General Counsel's Exhibit 16 marked for identification.)**

10 Q. BY MS. BRAZEAL: Okay. I'm showing you what's been
11 marked for identification as General Counsel's Exhibit 16.
12 And it's an e-mail string, so I would like for you to look
13 through this carefully and let me know when you're finished.

14 A. Okay.

15 Q. What is this document comprised of?

16 A. This is an e-mail chain between myself and Mr. Walther.
17 It spans from the very beginning of our contact with each
18 other through the scheduling of a bargaining date.

19 Q. So I'm looking at the last page of this exhibit, there's
20 an e-mail from you to Mr. Walther dated September 18th; is
21 that correct?

22 A. Yes.

23 Q. Okay, and so was that the first day that you had
24 contacted Mr. Walther?

25 A. Yes, it was.

1 Can the record reflect that we just talked about
2 introducing our charge as evidence.

3 JUDGE CARISSIMI: Yeah, there was some discussion off
4 the record about introducing a withdrawn charge. The copy is
5 not here now. Counsel for the Acting General Counsel will
6 secure it from the Regional Office and we'll move to
7 introduce it tomorrow.

8 **DIRECT EXAMINATION**

9 Q. BY MS. REBHORN: Ms. DeVore, in the July 2011 meeting
10 with Dr. Peatross, Dan Kinsley, what exactly did Dan Kinsley
11 say about union recognition?

12 A. He said they would recognize the unit.

13 Q. Can you repeat -- did you say unit?

14 A. He would recognize, yeah, he would recognize the
15 employees.

16 Q. Recognize the employees?

17 A. The employee group.

18 Q. I'm just -- what did he --

19 A. The Union. The Union.

20 Q. Okay. And what exactly did he say about hiring?

21 A. He said that hiring would not be an issue because as
22 long as they pass the background check, a drug screen, and a
23 physical, that they would meet the hiring requirements so
24 they would hire them.

25 Q. And at that time, did he say anything about changing the

1 terms and conditions of employment once they were hired?

2 A. He did not.

3 Q. In October 2011, did you have a meeting with

4 Dr. Peatross regarding subcontracting process?

5 A. Can you repeat that?

6 Q. In October 2011, did you have a meeting with

7 Dr. Peatross regarding the subcontracting process?

8 A. I did not.

9 MS. REBHORN: Okay, I'm going to show you some documents
10 that hopefully will refresh your recollection.

11 Your Honor, may I approach?

12 JUDGE CARISSIMI: You may.

13 Q. BY MS. REBHORN: Ms. DeVore, look that over and tell me
14 what it is?

15 MR. KADELA: Could I see what it is?

16 MS. REBHORN: Sure. I'll take it back.

17 JUDGE CARISSIMI: What exhibit number are you assigning
18 this?

19 MS. REBHORN: I actually haven't asked to admit it yet.
20 I just --

21 JUDGE CARISSIMI: Doesn't matter. Anything you show the
22 witness, you got to put a number on it.

23 MS. REBHORN: Okay, then Union's Exhibit 1.

24 JUDGE CARISSIMI: Remember my rule.

25 Okay, actually we're going to call it Charging Party 1.

1 Q. BY MS. REBHORN: That school board meeting, who if
2 anyone made the argument that the vote should be delayed or
3 that it should happen that night?

4 A. I made the argument that the vote should be delayed.
5 One of the board members, at least one of the board members
6 made that argument that the vote should be delayed.

7 Q. Did anyone argue that the -- or state an opinion that
8 the vote should happen that night?

9 A. Mr. Kinsley expressed that.

10 Q. What did he say?

11 A. He said that the whole purpose of them coming together,
12 you know, was to serve the public and serve the students, and
13 then you had to do a smooth a transition, and in order to do,
14 that you needed to act swiftly.

15 Q. On May 18th, why did you send that demand for
16 bargaining?

17 MR. KADELA: Objection.

18 THE WITNESS: On when?

19 JUDGE CARISSIMI: Hold it. There's an objection. The
20 basis of your objection?

21 MR. KADELA: Her motivation is irrelevant. It's what's
22 under consideration is the fact that it's being sent.

23 JUDGE CARISSIMI: The Union made a demand for
24 recognition. I'm going to sustain that.

25 Q. BY MS. REBHORN: Okay. What was your --

TAB 2

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7

In the Matter of:

FIRST STUDENT, INC., A DIVISION
OF FIRST GROUP AMERICA,

Respondent,

and

LOCAL 9036, UNITED STEEL, PAPER
AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION (USW),
AFL-CIO,

Charging Union,

and

SAGINAW SCHOOL DISTRICT,

Party in Interest.

Case No. 07-CA-092212

The above-entitled matter came on for hearing pursuant to notice, before **MARK CARISSIMI**, Administrative Law Judge, at **Saginaw Courthouse, 111 South Michigan Avenue, Room 200, Saginaw, Michigan**, on **Thursday, July 25, 2013**, at **9:00 a.m.**

<u>E X H I B I T S</u>			
<u>EXHIBIT NUMBERS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>	
GENERAL COUNSEL'S			
GC-12	--	285	
GC-18	223	224	
GC-19	221	223	
GC-20	364	366	
CHARGING PARTY'S			
CP-3	231	233	
CP-4	234	235	
CP-5	236	237	
CP-6	239	241	
CP-7	241	242	
CP-8	243	244	
CP-9	389	394	
RESPONDENT'S			
R-2	261	Not Offered	
R-3	276	279	
R-4	292	294 - Rejected	
R-5	337	Not Offered	
R-6	339	341	
R-7	380	381	

1 to the units within it?

2 MR. KADELA: Can I technically object, Your Honor?

3 Because this line of questioning began without a foundation
4 being laid for her knowledge.

5 MS. REBHORN: I believe the --

6 MR. KADELA: Of this subject.

7 JUDGE CARISSIMI: Well, I think that the witness
8 previously identified her position, so I'm going to overrule
9 the objection. You may continue.

10 Q. BY MS. REBHORN: What support does an amalgamated local
11 union provide for the units within it?

12 A. Amalgamated units or amalgamated locals consist of
13 primarily lots of smaller units. Those smaller units, and in
14 this case Saginaw Public Schools was a smaller unit, and even
15 First Student is a smaller group of employees. They
16 generally do not have a lot of members, and so they pool
17 together to pool their resources, and the local becomes the
18 fiduciary of doing the financial reports, filing the LM
19 reports, you know, managing the treasury, so that you don't
20 have, you know, smaller treasuries and a full complement of
21 officers for each small unit that you've got.

22 Q. What's an LM report?

23 A. An LM report is a requested paper report that needs to
24 be field annually by local unions. Every local union is
25 requested to fill one out.

1 Q. And with whom is it filed?

2 A. The Department of Labor.

3 Q. And do public and private sector local unions need to
4 fill out LM reports?

5 A. Public employees do not need to fill out LM reports.

6 Q. Can you explain to me what the nature of the
7 International Union is in the context of the Steelworkers?

8 A. I'm not sure if I understand the question.

9 Q. Okay. I'll ask a narrow question.

10 Who is the contracting party in collective bargaining
11 agreements that affect USW members?

12 A. The United Steelworkers and the Employer.

13 Q. When you say the United Steelworkers, what level of the
14 Union are you referring to?

15 A. The International Union.

16 Q. Can you just say that again?

17 A. The International Union.

18 Q. And whose decision is it to affiliate a unit of
19 employees with a specific local union?

20 A. It is the International executive board's decision.

21 Q. So the decision to assign a unit to a local can be made
22 unilaterally by the International?

23 A. Yes, it can. Actually our constitution, which is
24 adopted by our members, grants us that authority.

25 MS. REBHORN: Okay. Your Honor, may I approach the

1 workings of what you were doing with the school board and
2 what the school board was doing with you.

3 Q. Were you aware that the Company rebid the work in
4 February of 2012?

5 A. I was aware that in February of 2012 the school board
6 came to me and said we're getting closer to pursuing that
7 relationship with First Student.

8 Q. And when did you begin meeting with Dr. Peatross about
9 the district's contracting with First Student?

10 A. In February.

11 JUDGE CARISSIMI: Of what year, Ms. DeVore?

12 THE WITNESS: Of -- well, can you ask the question
13 again?

14 Q. BY MR. KADELA: When did you begin meeting with
15 Dr. Peatross about the district's contracting with First
16 Student?

17 A. Well, my first meeting with Dr. Peatross was in October,
18 or in July of 2011.

19 Q. And what about after that?

20 A. I'm not sure -- "meeting" might not be the right word.

21 Q. Communicating?

22 A. We started communicating in February of 2012.

23 Q. And did you have regular communication with her from
24 that point forward?

25 A. Sporadic communication.

1 Q. And did you learn from her in April of 2012 that First
2 Student would be taking over on July 1?

3 A. Can you repeat that question?

4 Q. Did you learn from her in April of 2012 that the
5 district would be moving forward with contracting with First
6 Student and that it would be assuming the transportation
7 function on July 1?

8 A. I don't think in April of 2012 that that was set in
9 stone and an accurate statement.

10 Q. When was it that you learned from her that it would be
11 July 1?

12 A. I don't recall.

13 Q. And did you hear from any of the bargaining unit members
14 that First Student, that the district was going to be moving
15 forward with a contract with First Student? And this is in
16 that timeframe, February to before the May board meeting.

17 MS. REBHORN: Your Honor --

18 MS. BRAZEAL: There is a --

19 MS. REBHORN: -- counsel is eliciting a lot of hearsay
20 here.

21 JUDGE CARISSIMI: We had some of that on direct about
22 reports from employees. Overruled.

23 THE WITNESS: When was it --

24 Q. BY MR. KADELA: I asked the question whether some of the
25 members contacted you and said it looks like the district is

1 JUDGE CARISSIMI: Just read it.

2 MS. BRAZEAL: Just read it.

3 JUDGE CARISSIMI: Just read it. She doesn't need to
4 know that. It's in her statement. Just read it.

5 Q. BY MS. BRAZEAL: All right. This is, quote, "As we
6 walked out, Kinsley approached us and told us not to be
7 upset, everything would be okay, they would recognize the
8 Union. He gave me his card," end quote.

9 JUDGE CARISSIMI: All right.

10 Q. BY MS. BRAZEAL: Do you --

11 JUDGE CARISSIMI: No. You quoted the affidavit. Do you
12 have a further follow-up question?

13 MS. BRAZEAL: No.

14 JUDGE CARISSIMI: All right, then you're done with that.

15 Q. BY MS. BRAZEAL: Okay. I'd like to move on. Now, how
16 long have you been a staff representative with the United
17 Steelworkers?

18 A. Since July of 2006.

19 Q. And about how many employers do you deal with
20 approximately?

21 A. About 27.

22 Q. In your experience as a staff rep, have you had
23 instances where employers have agreed to do something but
24 then fail to do so?

25 A. Yes.

1 Q. And what was the response?

2 A. That the wages were to remain the same.

3 Q. Mr. Kellerman?

4 A. That was Mr. Kellerman.

5 Q. Okay. Were there any other questions asked by
6 employees?

7 A. Yes. There was a question asked by an employee in the
8 garage about the Union.

9 Q. Okay.

10 A. And at that time Mr. Kellerman was about to, was trying
11 to --

12 Q. A question about the Union. What question was asked
13 about the Union?

14 A. Were they going to honor the Union.

15 Q. And was there a response to that question?

16 A. Yes. And that response came from Doug Meek.

17 Q. And what did he say?

18 A. Doug Meek said that, because the people were kind of
19 riled up, and he said that they didn't have to be excited or
20 upset or anything because they've taken over numerous
21 companies before, and they're with the Teamsters, and as long
22 as they hire 51 percent of the public school people, that
23 they were going to be honoring the Union.

24 Q. Did any representative from First Student say that any
25 term and condition of employment would be different?

1 A. No. Not at that time.

2 Q. And how long did this meeting last?

3 A. I would say maybe about 45 minutes to an hour.

4 Q. Did you attend a staff meeting on May 17th, 2012?

5 A. Yes, I did.

6 Q. I'd like to show you what's been entered into evidence
7 as General Counsel's Exhibit 5. Can you please review that
8 document?

9 A. (Reviews document.)

10 Q. Are you finished?

11 A. I am.

12 Q. Okay. Do you remember -- I'll take it back from you.
13 Do you remember receiving this document on that particular
14 day?

15 A. Yes, I do.

16 Q. Actually, let me -- during that meeting on May 17th,
17 2012, were there representatives present from First Student?

18 A. Yes.

19 Q. And who was present during that meeting?

20 A. Now, I don't remember all of them, but I do remember
21 Doug Meek and Rick Kellerman.

22 Q. Okay. And how did the meeting on May 17th begin?

23 A. The May 17th meeting began with them welcoming us to
24 First Student.

25 Q. When you say "they"?

1 Public School District as a monitor, we did a physical and a
2 background check at the time of employment.

3 Q. Uh-huh.

4 A. And I was been there for over three years, and we didn't
5 have to do a physical over again.

6 Q. Okay.

7 A. Now, they had drug testing randomly, but we did not have
8 to, you know, do that again each year.

9 Q. "They had drug testing." Who are you --

10 A. The public school system had drug testing.

11 Q. Okay.

12 A. But that would be randomly.

13 Q. Uh-huh.

14 A. You'd be selected throughout the year to maybe go.

15 Q. And you did a background check with the Saginaw Public
16 School District?

17 A. I did.

18 Q. Okay. And this letter is informing you that you have to
19 do a background check again?

20 A. Right, that we have to do all of that over again.

21 Q. Okay. All right. Was there anything else different
22 that you noticed about the terms in that letter than what
23 happened in place at the Saginaw Public School District?

24 A. Yes. I see on here that they have the rate of pay.

25 They had, like, First Student has two different pay rates.

1 JUDGE CARISSIMI: Who in First Student?

2 THE WITNESS: Well, actually I can't be certain exactly
3 which representative from First Student said it.

4 JUDGE CARISSIMI: Okay, that would be either Meek or
5 Kellerman?

6 THE WITNESS: Right.

7 JUDGE CARISSIMI: Thank you.

8 Q. BY MS. BRAZEAL: About how long did this meeting last on
9 May 17th?

10 A. Most of the meetings lasted about like an hour because
11 they were during the work time and everybody would have to,
12 you know, kind of like shift to try to be there, so about an
13 hour.

14 Q. During this meeting, what if anything was said about
15 interviews?

16 A. You know, I want to say that I can recall that for
17 certain, but I don't remember.

18 Q. Okay. Did you have to interview, were you required to
19 go on an interview?

20 A. I wasn't. I didn't go on an interview. The only thing
21 that we did was filled out the application.

22 Q. Okay. When you say "we," who are you referring to?

23 A. The garage employees. Everybody filled out, we had to
24 fill out a new application with First Student.

25 Q. And you did that?

1 A. Yes, I did.

2 Q. Okay. Did you ever receive a letter from First Student
3 saying that you were officially hired?

4 A. You know, I don't recall seeing that. If I did, I don't
5 remember it.

6 Q. Okay.

7 A. I just know that I had passed my testing, my background
8 check and what have you, and I did receive the letter
9 inviting me to the meeting, but as things progressed, that
10 wasn't really actually --

11 Q. Let me stop you right there. You said you received a
12 letter inviting you to a meeting. What meeting are you
13 referring to?

14 A. That would be the general meeting that we have every
15 year before the school year starts in order to get the work
16 duties and everything.

17 Q. Okay. Is that referred to as the startup meeting?

18 A. Yes, you could say that.

19 Q. And so did you attend the startup meeting in 2012?

20 A. Yes, I did.

21 Q. And do you know when that meeting was held?

22 A. That was like, that was the end of August.

23 Q. At that startup meeting, were there representatives
24 present from First Student?

25 A. Yes.

1 Q. And who was present for First Student on that day?

2 A. I know Kellerman was there. I really don't recall
3 anybody else, but I know Kellerman was there. Well, I can
4 say my boss, John Kiraly.

5 Q. Okay.

6 A. I can say that. He was there.

7 Q. About how many employees were present during that
8 meeting?

9 A. Most of the garage employees were there, about 40 I'd
10 say.

11 Q. I'll show you another document. It's been introduced as
12 General Counsel's Exhibit 9. Do you recognize this document?

13 A. Yes, I do.

14 Q. And what is that?

15 A. This document that I have right here, it states that the
16 hours or your route might be changing; it may not be the
17 same.

18 Q. Okay. Were you presented with that document on
19 August 27th?

20 A. Yes, I was.

21 Q. And did you sign that?

22 A. No, as a matter of fact I refused to sign.

23 Q. Okay. Thanks.

24 I'd also like to show you what has been entered as
25 General Counsel's Exhibit 10. Do you recognize that

1 document?

2 A. Yes, I do.

3 Q. And what is that?

4 A. This is the attendance policy that they had gave us.

5 Q. And when did you first come to see that document?

6 A. I really can't tell you exactly when I received it, but
7 I did receive it.

8 Q. Do you know if the terms in that document were the same
9 or different than what was in place with the Saginaw School
10 District?

11 A. They're different.

12 Q. They're different?

13 A. Yes, they are.

14 MS. BRAZEAL: That's all the questions I have, Your
15 Honor.

16 JUDGE CARISSIMI: Thank you.

17 Does Charging Party have any questions?

18 MS. REBHORN: Just a couple

19 JUDGE CARISSIMI: You may proceed, Ms. Rebhorn.

20 **DIRECT EXAMINATION**

21 Q. BY MS. REBHORN: Ms. Stidhum-Stewart, at the May 17th
22 meeting when you were welcomed to First Student, what exactly
23 did Mr. Kellerman and Mr. Meek say?

24 A. When they welcomed us to First Student, they said
25 that --

1 JUDGE CARISSIMI: First --

2 THE WITNESS: When they welcomed us to First Student,
3 Mr. Meek and Kellerman, they told us that we were going to
4 remain in our same position and that nothing was going to
5 change and everything was going to remain the same.

6 JUDGE CARISSIMI: Now, did both of them say those words?

7 THE WITNESS: The transition would be a smooth
8 transition. Those were their words.

9 Q. BY MS. REBHORN: Ms. Stidhum-Stewart, what we're trying
10 to get at, we need to know if you remember what Mr. Kellerman
11 said and what Mr. Meek said. That's how it works best.

12 A. Okay, well, then I would say that Mr. Meek said that the
13 transition would be smooth.

14 Q. Is that -- Mr. Meek said that?

15 A. Right, the transition would be smooth.

16 Q. And who said, "Welcome to First Student"?

17 A. Actually it was Kellerman. Actually the both of them
18 were there, so that might have been in unison.

19 Q. Okay. You said you didn't need regular physicals when
20 you were employed by Saginaw School District?

21 A. Not every year.

22 Q. How often?

23 A. Actually I only had one, and I had been there for over
24 three years.

25 Q. Do you hold a commercial driver's license?

1 Q. BY MR. KADELA: Ms. Stidhum-Stewart, I want to show you
2 what we've marked for identification as Respondent's
3 Exhibit 5. Do you recognize that as a copy of your
4 affidavit?

5 A. Oh, yes.

6 Q. Now, if you turn to the second page, I've highlighted
7 the first full paragraph and the third full paragraph.

8 A. Yes.

9 Q. First paragraph says, quote, "Someone asked if they
10 would recognize the Union. Either Kellerman or Meek said as
11 long as they hired 50 percent plus one, they would recognize
12 the Union. Someone asked what if they didn't hire 50 percent
13 plus one. They said in all the years they have been doing
14 this, they usually hire 80 percent so they weren't worried
15 about the 50 percent plus one," close quote. Did I read
16 that -- well, close quote.

17 Then in the next paragraph after that, quote, "Someone
18 asked what about the hours. They said they guaranteed a
19 minimum of 1½ hours in the morning and 1½ hours in the
20 afternoon. I worked 4.8 hours for the district. I now work
21 three hours a day or 30 hours biweekly," period, close quote.

22 Ms. Stidhum-Stewart, do you recall receiving an offer
23 letter from First Student?

24 A. What do you mean by an offer letter?

25 Q. A letter offering you a position with the Company?

1 Q. And who were they?

2 A. Doug Meek, Rick Kellerman, Dan Kinsley. Dr. Peatross.

3 Q. Now, Dr. Peatross, was she with First Student, or is she
4 with the Saginaw School District?

5 A. She was Saginaw School.

6 Q. So how did this meeting begin?

7 A. They was telling us we was going to have a smooth
8 transition --

9 JUDGE CARISSIMI: Excuse me, Ms. Ezell. Do you remember
10 who spoke first at the meeting? The individual by name?

11 THE WITNESS: Doug Meek.

12 JUDGE CARISSIMI: All right, counsel, you may.

13 Q. BY MS. BRAZEAL: What did Doug Meek say?

14 A. He was telling us we was going to have a smooth
15 transition, he was going to honor our contract, use our, go
16 by our seniority. Our insurance was going to be cheaper.
17 And I can't remember what else.

18 Q. Were there any questions asked by employees during this
19 meeting?

20 A. Yes.

21 Q. About how many employees asked questions?

22 A. Probably five or six plus.

23 Q. What were the questions they asked, if you can recall?

24 A. I can't recall.

25 Q. Do you know if -- okay. Did any representative from

1 First Student say anything else about terms and conditions of
2 employment besides, you know, the wages and benefits, wages
3 and health insurance and seniority?

4 A. I can't remember.

5 Q. Do you recall if anything was said about hiring?

6 A. Yes, they had a hiring process.

7 Q. Was that said during that meeting? Was anything said
8 about hiring during that meeting?

9 A. Yes.

10 Q. And who spoke regarding hiring, and what did they say?
11 What did he say?

12 A. Maybe it was Dan Kinsley. He was telling us that we got
13 to have a background check. They was going to hire
14 everybody, and we need to do our application, background
15 check, physical, drug test; that's all I remember.

16 Q. Okay. While employed at Saginaw School District, were
17 you subject to drug tests?

18 A. Yes.

19 Q. And how were they administered? What I'm looking for is
20 were these every -- was it a particular schedule that you
21 were scheduled for drug tests?

22 A. Random.

23 Q. Random. Okay. Did you have to undergo a background
24 check while employed with Saginaw School District?

25 A. Only when we got hired.

1 Q. Okay. All right. How long did this meeting last on
2 March 2nd, 2012?

3 A. Probably an hour.

4 MS. BRAZEAL: That's all I have, Your Honor.

5 JUDGE CARISSIMI: Is there any questions by counsel for
6 the Charging Party?

7 MS. REBHORN: No questions, Your Honor.

8 JUDGE CARISSIMI: Mr. Kadela, cross-examination.

9 MR. KADELA: Did Ms. Ezell provide an affidavit?

10 MS. BRAZEAL: No, she did not.

11 JUDGE CARISSIMI: Do you want to proceed now,
12 Mr. Kadela, or do you need some time to --

13 MR. KADELA: Just a couple of minutes, Your Honor.

14 JUDGE CARISSIMI: All right, let's go off the record.

15 (Off the record.)

16 JUDGE CARISSIMI: Back on the record.

17 You may proceed, Mr. Kadela.

18 CROSS-EXAMINATION

19 Q. BY MR. KADELA: Good afternoon, Ms. Ezell.

20 A. Good afternoon.

21 Q. How are you doing today?

22 A. All right.

23 Q. Very good.

24 I have just a few questions for you. I want to go back
25 to this meeting you were talking about. Mr. Meek, you recall

1 A. My primary responsibilities are to oversee human
2 resources, but I also support facilities, food service,
3 transportation, and custodial/maintenance.

4 Q. At any point since you began your employment with the
5 Saginaw Public School District, did you become aware that the
6 school district may subcontract bus services?

7 A. Yes.

8 Q. And when did you first become aware of that?

9 A. Discussions began shortly after I came on board in
10 January.

11 Q. Of 2011?

12 A. Yes.

13 Q. Are you aware of any event that led the school district
14 to pursue the option of subcontracting the bus services?

15 A. No.

16 Q. Drawing your attention to the summer of 2011, did you
17 attend any meetings with prospective vendors for bus
18 services?

19 A. Yes.

20 Q. And how many such meetings did you attend like that?

21 A. There were two.

22 Q. Did one of those meetings -- well, did representatives
23 from First Student attend one of those meeting?

24 A. Yes.

25 Q. Did they attend both of those meetings or one?

1 A. No, just one.

2 Q. And who was present on behalf of First Student during
3 that meeting?

4 A. Specifically by name, that would be difficult to say
5 outside of Dan Kinsley.

6 Q. Okay.

7 A. As the primary presenter.

8 Q. Could there have been another person present?

9 A. Yes.

10 Q. You were present?

11 A. Absolutely.

12 Q. Was there anyone else present during that meeting with
13 First Student?

14 A. I can't recall at this time.

15 Q. Do you know someone named Tonya DeVore?

16 A. Yes.

17 Q. Was she present at that meeting?

18 A. Ms. DeVore was not present at all meetings, and it would
19 be difficult for me to confirm whether or not she was there
20 when First Student presented.

21 Q. So you can't recall?

22 A. Correct.

23 Q. Okay. And what was the purpose of that meeting with
24 First Student?

25 A. With First Student and the other vendors, it was to

1 present proposals related to outsourcing transportation.

2 Q. Okay. Now, regarding your meeting with First Student,
3 did -- you said you recall Mr. Kinsley being present. Did he
4 make any presentations during that meeting?

5 A. Each vendor made a presentation, yes.

6 Q. And did he make a presentation, Mr. Kinsley?

7 A. On behalf of First Student, yes.

8 Q. Okay. Do you recall what he said with respect to what
9 First Student could provide to the school district?

10 A. Can you be more specific?

11 Q. Let me ask you, did he say anything relating to terms
12 and conditions of employment of employees if they were to
13 become First Student employees?

14 A. Terms and conditions related to?

15 Q. Okay, let me ask, did Mr. Kinsley say anything regarding
16 wages for employees, if they were to become First Student
17 employees?

18 A. I'm going to say I can't recall.

19 Q. Do you know if he said wages would be the same or would
20 wages be different?

21 A. At that meeting I don't believe that was communicated.

22 Q. Did he say anything regarding hiring of employees?

23 A. Yes. If I could add, though, this was something that
24 the district requested of every vendor that presented.

25 Q. Okay. That's fine, but I just wanted to know what, if

1 anything, Mr. Kinsley said about hiring. When I say that did
2 he say, you know, how many employees would be hired, would
3 employees be hired?

4 A. No.

5 Q. Nothing was said regarding hiring?

6 A. No. If I could clarify, the purpose of the meeting was
7 for each vendor to present their proposal to the district.

8 Q. Is it that you don't recall if hiring was discussed or
9 Mr. Kinsley did not say anything regarding hiring?

10 A. I don't recall.

11 Q. You don't recall. Thanks.

12 I'd like to show you what's been admitted in evidence as
13 General Counsel's Exhibit 3. I'll ask if you can take a look
14 at that document. Do you recognize that document?

15 A. Yes.

16 Q. And what is that?

17 A. This was a spreadsheet that was prepared from our prior
18 CFO that outlined the three vendors that submitted proposals
19 and information that we asked for in the specific categories,
20 and she then populated the fields based on what they
21 presented.

22 Q. When you say "we," who are you referring to? When you
23 said we asked for this to be created, who --

24 A. The committee that sat and participated in the interview
25 process with these vendors.

1 Q. So they're members from the Saginaw Public School
2 District?

3 A. Yes.

4 Q. When did you first come to see this document?

5 A. After all three vendors had presented.

6 JUDGE CARISSIMI: Who's the name of the individual who
7 actually prepared this document?

8 THE WITNESS: Phoebe Wood.

9 JUDGE CARISSIMI: And her position at the time was?

10 THE WITNESS: Chief financial officer.

11 JUDGE CARISSIMI: Thank you.

12 THE WITNESS: You're welcome.

13 Q. BY MS. BRAZEAL: After you received this document, did
14 you have the opportunity to share this with any employees of
15 the Saginaw Public School District?

16 A. We did. It was available to the public if they wanted
17 it as well as board members.

18 Q. Okay. And did you make it available -- do you recall
19 providing this to the actual bus drivers?

20 A. Myself not specifically, no.

21 Q. Is that no, you didn't do it, or no, you don't recall?

22 A. I specifically did not provide it to them.

23 Q. Let me give this back to you. And I'd like to just draw
24 your attention to the column --

25 JUDGE CARISSIMI: What exhibit?

1 MS. BRAZEAL: This is General Counsel's Exhibit 3.

2 JUDGE CARISSIMI: Thank you.

3 Q. BY MS. BRAZEAL: And I'd like to draw your attention to
4 the column that says First Student. And if you could just
5 read that over.

6 A. Okay.

7 Q. Are the comments within that column accurate -- well, do
8 those comments reflect what First Student told you during
9 your meetings with them about assuming the bus services for
10 the school district?

11 A. Yes.

12 MR. KADELA: Objection.

13 JUDGE CARISSIMI: Basis for your objection?

14 MR. KADELA: It's hearsay to the extent it's being
15 offered regarding --

16 JUDGE CARISSIMI: No, this is --

17 MR. KADELA: -- communication to the employees.

18 JUDGE CARISSIMI: Overruled. This is communications
19 with First Student representatives. Objection is overruled.

20 Q. BY MS. BRAZEAL: Your answer was yes?

21 A. Yes.

22 Q. Okay, thank you.

23 Just, in March 2012, did you attend any meetings with
24 First Student representatives and bus drivers?

25 A. Yes.

1 Q. Okay. How many meetings did you attend in March 2012
2 with First Student representatives and bus drivers?

3 A. One.

4 Q. Okay. And who was present on behalf of First Student?

5 A. Mr. Dan Kinsley, Mr. Meek, and I believe there was one
6 other individual.

7 Q. About how many employees were present during that
8 meeting?

9 A. I would say approximately 15-plus.

10 Q. What was the purpose of the meeting?

11 A. The purpose of the meeting was to talk about transition
12 and discuss any questions or concerns that the bus drivers
13 may have because the board had taken action to approve First
14 Student taking over as the transportation provider for the
15 district.

16 Q. And did employees ask questions of First Student?

17 A. Yes.

18 Q. And what questions did they ask that you can recall?

19 A. Questions that were asked were relative to pay.

20 Q. Okay, just with that what -- did the employees ask how
21 much they would be paid? I mean what types of questions did
22 they --

23 A. They asked if the pay would remain the same.

24 Q. And what did -- did a representative from First Student
25 respond to that question?

1 A. Yes, and the response was yes, the pay would remain the
2 same..

3 Q. And do you know who made that response?

4 A. I cannot recall.

5 Q. What was another question that was asked?

6 A. There was a question asked about healthcare benefits.

7 Q. And what was the question?

8 A. The question was if the employees would acquire
9 healthcare benefits and if it would look similar to what they
10 had.

11 Q. And was there a response?

12 A. There was, and the response was that it would be
13 comparable insurance.

14 Q. Were there any other questions?

15 JUDGE CARISSIMI: Before you answer that, Dr. Peatross,
16 do you recall who made the response to the question about
17 healthcare benefits, which individual?

18 THE WITNESS: That would be Mr. Meek.

19 JUDGE CARISSIMI: Thank you

20 THE WITNESS: You're welcome.

21 Q. BY MS. BRAZEAL: Any other questions asked by employees
22 during that meeting?

23 A. I'm sure there were. I just can't recall.

24 Q. Okay. Was anything stated about First Student's intent
25 to recognize the Union?

1 A. Yes.

2 Q. And what was -- well, was that in response to a question
3 or did First Student -- was that in response to a question?

4 A. I can't recall.

5 Q. Okay. And who made, what was said with respect to
6 recognizing the Union by whom during this meeting?

7 A. I believe multiple people did, including myself.

8 Q. What did you say?

9 A. Okay. I did have an opportunity to address the staff,
10 and what was communicated was that the district's position as
11 we partnered with First Student would be such that salary
12 would remain the same, the hourly rate; that the employees
13 would receive comparable benefits; and that those that --
14 First Student would hire as many as they could as long as
15 those employees passed the pre-employment screeners; the
16 Union would be recognized provided they had 50 plus one in
17 order to do so. Understanding that the contract was going to
18 be expiring, I encouraged both parties to begin negotiating
19 as soon as possible so that perhaps a contract could be
20 established before their contract expired.

21 Q. Thank you.

22 And what did First Student say with respect to
23 recognizing the Union?

24 A. There was acknowledgement.

25 Q. What do you mean by -- I mean was there yes, no?

1 A. There was yes, an agreement that they would recognize
2 the Union.

3 JUDGE CARISSIMI: Do you recall who indicated that for
4 First Student?

5 THE WITNESS: I don't, other than it was either Mr. Meek
6 or Mr. Kinsley.

7 JUDGE CARISSIMI: Can you give us any further detail
8 about the actual language they used with regard to
9 recognition of the Union?

10 THE WITNESS: Not outside of what I just described.

11 JUDGE CARISSIMI: All right, thank you.

12 THE WITNESS: You're welcome.

13 JUDGE CARISSIMI: **Off the record.**

14 **(Off the record.)**

15 JUDGE CARISSIMI: **All right.**

16 Q. BY MS. BRAZEAL: Dr. Peatross, I would like to show you
17 what has been admitted as Charging Party's Exhibit 2. It's
18 very similar to General Counsel's 3 but a little different.
19 Do you recognize that document?

20 A. I do.

21 Q. Do you recognize that document, then, being different
22 than General Counsel's Exhibit 3, which you just say?

23 A. Yes.

24 Q. And when did you first come to see that document?

25 JUDGE CARISSIMI: By "that document," you mean Charging

1 Party 2?

2 MS. BRAZEAL: Yes, Charging Party's 2.

3 THE WITNESS: I'm not sure if this one came prior to or
4 after your other exhibit.

5 Q. BY MS. BRAZEAL: Okay. Do you recall providing that
6 document, Charging Party 2, to Tonya DeVore?

7 A. I can't recall.

8 Q. Just reading the column titled First Student, if you can
9 just take a look at that?

10 A. Okay.

11 Q. Is the content of that column consistent with what you
12 were told by First Student at the time that you had first
13 reviewed Charging Party 2?

14 MR. KADELA: Objection.

15 JUDGE CARISSIMI: Basis?

16 MR. KADELA: Hearsay.

17 JUDGE CARISSIMI: Overruled.

18 THE WITNESS: Yes, to my knowledge.

19 MS. BRAZEAL: Thank you.

20 I don't have any further questions.

21 JUDGE CARISSIMI: I must ask what are you going to do
22 with GC-20, if anything?

23 MS. BRAZEAL: Oh, yes. I move for the admission of
24 General Counsel 20.

25 JUDGE CARISSIMI: I know there's been discussion, but is

1 Q. BY MS. BRAZEAL: I'm looking at the actual document,
2 which I believe this was the attachment, go sort of midway
3 through this.

4 JUDGE CARISSIMI: And you're referring to GC-20?

5 Q. BY MS. BRAZEAL: GC-20. There's a page, and it has a
6 page number four, but it's not the fourth page, and at the
7 top it says, "First Student Outsourcing Transition Plan for
8 Saginaw Public Schools." Four pages from the back of the
9 document. Are you there?

10 A. Yes.

11 Q. And I'd like for you to just read to yourself the first
12 paragraph of that document of this particular page.

13 A. (Reviews document.)

14 Q. Are you finished?

15 A. Uh-huh.

16 Q. Is that paragraph consistent with what First Student
17 told you it would do if awarded the bus services contract
18 from the Saginaw School District?

19 A. Yes.

20 Q. Regarding the transition from the school district to
21 First Student of the bus services, did the district have any
22 requirements that they imposed upon First Student relating to
23 terms of employment?

24 A. Can you be more specific?

25 Q. Okay. Did the district require anything related to, you

1 know, what wages should be, what benefits should be, what
2 other employment terms should be in place for the employees
3 should the employees be transitioned from the Saginaw School
4 District to another vendor?

5 A. As I communicated earlier, the district's position as we
6 partnered with First Student was that the employees would
7 receive the same rate of pay and comparable insurance.

8 Q. So same rate of pay and comparable insurance. Were
9 those the things that the school district wanted First
10 Student to provide for employees?

11 A. Yes.

12 MS. BRAZEAL: I have no further questions for this
13 witness.

14 JUDGE CARISSIMI: Does counsel for the Charging Party
15 have any questions?

16 MS. REBHORN: Your Honor, may I have a minute?

17 JUDGE CARISSIMI: You may. Let's go off the record.

18 (Off the record.)

19 JUDGE CARISSIMI: Back on the record.

20 You may proceed, counsel.

21 DIRECT EXAMINATION

22 Q. BY MS. REBHORN: Hi, Dr. Peatross. I'm Emma Rebhorn.
23 I'm counsel for the Union.

24 A. Hello.

25 Q. I have some questions for you. When you were testifying

1 about the July 2011 meeting, what was it that the district
2 required of all bidders?

3 A. In reference to?

4 Q. In the beginning of your testimony, I don't want to
5 mischaracterize it, but I recall you saying that there was
6 something --

7 JUDGE CARISSIMI: Just ask a question. Just ask a
8 question.

9 MS. REBHORN: Okay, I'm trying to help her.

10 Q. BY MS. REBHORN: Was there anything that the district
11 required of all bidders? And if you can't answer that, I can
12 move on.

13 A. To partner with the district, we asked from each partner
14 vendor that they provide comparable benefits, because these
15 were our employees and they're part of our family; therefore,
16 we did not want to harm them as we transitioned over to
17 outsourcing, so with that we wanted them to have same rate of
18 pay and comparable healthcare benefits.

19 Q. Did First Student tell you that current district bus
20 drivers and monitors would have priority in hiring?

21 A. Yes.

22 Q. On the charts that the General Counsel, Ms. Brazeal,
23 showed you, you said the -- I understand the CFO prepared
24 those charts. What was the source of information on those
25 charts?

1 A. What was the source of information?

2 Q. What was the source of the information that was put on
3 the charts?

4 A. It was based on the proposals that were presented both
5 verbally and in writing.

6 Q. Including First Student's verbal and/or written
7 proposal?

8 A. Yes.

9 Q. And that chart was -- was it distributed at a public
10 meeting?

11 A. It was available at a board meeting, yes.

12 Q. When you say a board meeting, do you mean a school board
13 meeting?

14 A. Yes.

15 Q. And are those --

16 JUDGE CARISSIMI: Counsel, when you say, "that chart,"
17 what are you referring to?

18 Q. BY MS. REBHORN: Oh, the exhibit numbers are Charging
19 Party 2 and General Counsel 3. The charts that -- would you
20 like me to show them to you again?

21 A. No, I recall the charts. I can't specifically say which
22 one was presented at the school board meeting, but they were
23 available, yes.

24 Q. And school board meetings are open to the public?

25 A. Yes.

1 Q. Specifically the May 16th, 2012 school board meeting, do
2 you know the significance of that meeting date?

3 A. I can't recall at this time.

4 Q. Okay. That was when the school board voted to approve
5 the contract with First Student. Was that school board
6 meeting public?

7 A. Yes.

8 Q. So was the whole process of decision making about this
9 subcontracting open to the public, including the charts, the
10 request for proposal, those proposals, and other paperwork?

11 A. To respond to what you identified, the charts were open
12 to the public, the RFP anyone could submit, anyone could be
13 present when they were opened. It was closed when we had the
14 interviews, so when the vendors presented to the district, it
15 was not publicized to the public; it was for internal
16 purposes only.

17 Q. But one presentation in July 2011 where the vendors
18 presented to the district, Tonya DeVore was present; is that
19 correct?

20 A. Ms. DeVore was not present for all of them, and I cannot
21 recall if she was there when First Student presented.

22 Q. Okay, but she may have been?

23 A. She may have been.

24 Q. Oh, and in fact she was present at your invitation at at
25 least one of those meetings?

1 for ways to save money, cut its costs?

2 A. Correct.

3 Q. And that was an unfortunate consequence of declining
4 numbers of students in the district and declining revenues?

5 A. Yes.

6 Q. The RFP was issued in mid-June of 2011; is that right?

7 A. Yes.

8 Q. And the bids were then submitted by July 20; is that
9 correct?

10 A. I can't recall.

11 Q. Okay. It was after the bids were submitted that you
12 conducted the interviews?

13 A. Correct.

14 Q. How many vendors did you interview?

15 A. Three.

16 Q. And that was First Student, Dean, and Mets, or M-e-t-s?

17 A. Yes.

18 Q. And were they held over the course of two days?

19 A. Yes.

20 Q. Who was the chief spokesperson for the district at those
21 interviews?

22 A. Our chief financial officer, Phoebe Wood.

23 Q. And were you present at each of the three interviews?

24 A. Yes.

25 Q. And was Mr. Lapan present as well?

- 1 A. Yes.
- 2 Q. What was his job?
- 3 A. He was the director of facilities.
- 4 Q. And was Mr. Bradley there?
- 5 A. Yes.
- 6 Q. And each prospective vendor had an hour to present?
- 7 A. Yes.
- 8 Q. And was there any record kept of the presentations, any
9 attendance, for instance, in terms of who was present for the
10 meeting?
- 11 A. There was not a sign-in sheet for the meeting.
- 12 Q. Did you maintain any notes or anyone maintain any notes?
- 13 A. Each individual kept their own.
- 14 Q. Did you have an opportunity to check your notes about
15 those interviews?
- 16 A. I had an opportunity to locate, attempt to locate, and
17 wasn't able to do so.
- 18 Q. Okay. With respect to First Student, Dan Kinsley was
19 present on their behalf at the interview?
- 20 A. Yes.
- 21 Q. And do you remember Justin Bridle being there? Does
22 that refresh your memory?
- 23 A. I don't recall.
- 24 Q. Over the course of the presentation, do you recall there
25 being a question with respect to whether First Student would

1 recognize the Union?

2 A. Yes.

3 Q. And did you recall the answer being that upon retaining
4 50 percent plus one or 51 percent of the existing workforce,
5 it would recognize the Union?

6 A. Yes.

7 Q. Did you have any other meetings with First Student
8 between then and the middle of October 2011 that you can
9 recall?

10 A. Not that I can recall.

11 Q. Dr. Peatross, I don't know if you still have the
12 exhibits in front of you that were presented to you
13 previously which were the spreadsheets.

14 A. Those I do not. They're not up here.

15 Q. They're not up here. That's CP-2 --

16 JUDGE CARISSIMI: Okay, I have General Counsel Exhibit 3
17 I could hand the witness, and I believe I have the other one.

18 MS. REBHORN: I have additional copies of those also
19 that I've been marking.

20 JUDGE CARISSIMI: Okay. Let's go off the record.

21 (Off the record.)

22 JUDGE CARISSIMI: Back on the record.

23 The witness now has copies in front of her of both
24 General Counsel Exhibit 3 and Charging Party 2, and you may
25 proceed, counsel.

1 MR. KADELA: Thank you.

2 Q. BY MR. KADELA: Dr. Peatross, there was no point in time
3 at which First Student dropped the condition that it would
4 recognize the Union upon hiring 50 percent plus one of the
5 employees?

6 A. No, it did not.

7 Q. Pardon?

8 A. It didn't.

9 Q. And when we look at GC-3 and CP-2, the charge that you
10 identified, under First Student where it says, "Will
11 recognize union," your understanding was that that was upon
12 the condition of the Company's hiring the majority of the
13 employees?

14 A. That is correct.

15 Q. Do you recall that on October 12, 2011 at a board
16 meeting, there was a vote to move forward with entering into
17 a contract with First Student?

18 A. Yes.

19 Q. And do you recall that a determination was made to
20 withdraw the RFP after making that award?

21 A. Yes.

22 Q. And what was a determination made by Dr. Jenkins?

23 A. Yes.

24 JUDGE CARISSIMI: Let's go off the record.

25 (Off the record.)

1 JUDGE CARISSIMI: Back on the record.

2 MR. KADELA: Thank you, Your Honor.

3 MS. REBHORN: Your Honor?

4 JUDGE CARISSIMI: Yes?

5 MS. REBHORN: May I make speak about what happened while
6 we were off the record?

7 JUDGE CARISSIMI: Yes.

8 MS. REBHORN: We learned, the Charging Party and Counsel
9 for the General Counsel learned that one of Respondent's
10 witnesses had been in the hearing room for about 10 minutes.
11 We expressed our concern about that because the witness
12 testifying controls the work that the witness who is present
13 in the courtroom does, and we object to that conduct.

14 JUDGE CARISSIMI: All right. Anything, does Acting
15 General Counsel wish to make a statement?

16 MS. BRAZEAL: I just would concur with the Union.

17 JUDGE CARISSIMI: All right, counsel for Respondent, do
18 you wish to address the issue?

19 MR. KADELA: The only thing I would say, I would imagine
20 that Mr. Bradley and Dr. Peatross would agree that
21 Dr. Peatross doesn't control the work, that they have an
22 independent contractor relationship.

23 JUDGE CARISSIMI: And importantly I want to make sure
24 the record reflects that the individual has been removed from
25 the courtroom and is no longer present.

1 MR. KADELA: And I had communicated to Mr. Bradley, but
2 he's in unfamiliar surroundings, that we had a sequestration
3 order --

4 JUDGE CARISSIMI: Okay.

5 MR. KADELA: -- on that he shouldn't be coming in.

6 JUDGE CARISSIMI: And the name of the individual was
7 Mr. Bradley?

8 MR. KADELA: Yes.

9 JUDGE CARISSIMI: Is that correct?

10 And was his presence in the courtroom known to you
11 before Mr. Walther noticed it? Did any of you? And I mean,
12 by that I mean the three attorneys representing the
13 Respondent realize that he was here until Mr. Walther turned
14 around and observed him?

15 MR. KADELA: No, we did not, Your Honor.

16 MR. HULT: I didn't see him before that.

17 JUDGE CARISSIMI: All right. All right, Mr. Kadela, you
18 may proceed.

19 MR. KADELA: Thank you.

20 **(Respondent's Exhibit 7 marked for identification.)**

21 Q. BY MR. KADELA: Dr. Peatross, you've been handed what
22 we've marked for identification at this point as Respondent's
23 Exhibit 7. Can you identify this for us?

24 A. Yes. It's an e-mail from myself to Mr. Meek.

25 Q. Advising him of the determination to withdraw the RFP?

1 A. Yes.

2 MR. KADELA: Move for admission of Respondent's
3 Exhibit 7?

4 JUDGE CARISSIMI: Any objection to Respondent 7?

5 MS. BRAZEAL: Well -- no objection, Your Honor.

6 JUDGE CARISSIMI: All right, from the Charging Party?

7 MS. REBHORN: No objection, Your Honor.

8 JUDGE CARISSIMI: Respondent Exhibit 7 is admitted.

9 **(Respondent's Exhibit 7 received in evidence.)**

10 Q. BY MR. KADELA: Dr. Peatross, after the RFP was
11 withdrawn, did the school district reenter into discussions
12 with First Student about contracting with it to provide the
13 transportation service?

14 A. Yes.

15 Q. And do you recall around when those talks began?

16 A. I believe they began after the first of the year,
17 January 2012.

18 Q. And you were shown previously General Counsel's Exhibit
19 Number 20, which I will show you again if you don't have it.
20 Yes, very good, thank you.

21 A. Uh-huh.

22 Q. Those discussions led to First Student's sending to the
23 school district the revised proposal and transition plan that
24 are found within GC-20; is that true?

25 A. Yes.

1 Q. And subsequent to that there was action taken between
2 First Student and the district to negotiate the terms of a
3 contract?

4 A. Yes.

5 Q. And during that period of time in early March 2012, you
6 arranged a meeting between First Student and the members of
7 the bargaining unit?

8 A. Yes.

9 Q. And Mr. Meek and Mr. Kinsley were there for First
10 Student?

11 A. Yes.

12 Q. And one other representative whose name you don't
13 recall?

14 A. Correct.

15 Q. Do you recall Mr. Meek at that meeting, in response to a
16 question, indicating that First Student would recognize the
17 Union upon hiring 50 percent plus one or a majority of the
18 employees?

19 A. Yes.

20 Q. There were some questions naturally from the employees
21 about what the future would be like under First Student?

22 A. Yes.

23 Q. Do you recall there being questions about vacation pay,
24 sick time, holidays?

25 A. I don't recall those questions.

1 Q. Do you recall there being any questions to which
2 Mr. Meek responded that those were the types of subjects that
3 would be addressed in negotiations?

4 A. Yes.

5 Q. Do you recall there being any questions about hours or
6 any discussion of hours?

7 A. Yes.

8 Q. What do you recall about that?

9 A. There were questions from the employees about the same
10 number of hours because there are hours attached to routes in
11 the mornings and in the afternoons, and First Student made no
12 commitment to the hours. It was identified that they would
13 have to look at what the routes would be in order to
14 determine the hours that would be provided.

15 Q. Do you recall there being a time when, I'm not sure how
16 best to describe this, that there was a lot of cross-talk
17 between the employees there, and do you recall stepping in
18 and saying to them that when the district contracted with
19 First Student, their contract with the district would be null
20 and void?

21 A. At that particular meeting, there was conversation about
22 the contract going to expire. I believe it was actually
23 July, not June, but July 31st, and that's when I encouraged
24 both parties to begin to work together to negotiate a new
25 contract prior to the expiration of the contract that they

1 had with us as a district because we had entered into a
2 contract with First Student.

3 Q. That was not a condition, however, that the school
4 district placed on First Student?

5 A. No.

6 Q. The school board voted on May 16 to approve entering
7 into a contract with First Student, correct?

8 A. Yes.

9 Q. Prior to that meeting, the terms of the contract had
10 already been ironed out between your team and the First
11 Student team?

12 A. Yes.

13 Q. Do you recall inviting Mr. Kinsley to the school board
14 meeting on May 16th?

15 A. Yes.

16 Q. And do you recall what you, the nature of your
17 invitation, what you told him?

18 A. It was to inform him that the board would be taking
19 action to award a contract to First Student for a period of
20 five years.

21 Q. Was Mr. Kinsley scheduled to speak that evening?

22 A. No.

23 Q. How did it happen that he came to speak to the board
24 members?

25 A. Oftentimes our board members want to ask direct

1 questions of individuals that are being awarded contracts,
2 and so it was at that time that a board member or more had a
3 specific question of Mr. Kinsley.

4 Q. And do you recall him being asked if the Company would
5 recognize the Union?

6 A. I don't recall that particular question.

7 Q. Okay. Do you recall how long he was at the podium for?

8 A. I do not.

9 Q. Are you able to ballpark it?

10 A. I would say at a minimum 15 to 20 minutes.

11 Q. And do you recall his being asked about First Student's
12 hiring plans?

13 A. Yes.

14 Q. And do you recall him saying that it would extend offers
15 to existing employees who satisfied its hiring requirements?

16 A. Yes.

17 Q. Did you recall him elaborating on some of the hiring
18 requests, including background checks, physical exams, driver
19 or MVR records, and the like?

20 A. I believe he briefly touched on those, but just
21 indicated that as long as our current employees could pass
22 their pre-screeners for employment, that they would be hired.

23 Q. And do you recall him being asked about wages?

24 A. Yes.

25 Q. What do you recall him saying in response to that?

1 A. That the partnership with our district would be that
2 they would be hiring our current employees as their employees
3 at the same rate of pay.

4 Q. Do you recall Mr. Kinsley saying that the Company would
5 recognize the Union upon hiring 51 percent of the employees?

6 A. Yes.

7 Q. Do you recall Mr. Kinsley saying anything that was not
8 in response to a question?

9 A. No.

10 Q. Is there anything else you recall about his remarks to
11 the board that evening?

12 A. What I would say is what I recall Mr. Kinsley saying is
13 that First Student was entering into a partnership with the
14 district and that they understand how we felt about our
15 current employees and that they would do everything that they
16 could in relationship to our requests to make that happen.
17 Again, the focus of the meeting was ensuring that the
18 employees received the same rate of pay and then also the
19 comparable benefits because that was the concern of the board
20 and of the superintendent.

21 Q. With respect to benefits, if you could look at GC-20,
22 specifically page three of the exhibit where there's an
23 overall category, proposal revisions and clarifications and
24 below that there's a section on health benefits, do you see
25 that?

1 Q. Okay, but in terms of going on the payroll?

2 A. Yes.

3 Q. August 27 was their first day?

4 A. Yes.

5 MR. KADELA: One second, Your Honor.

6 JUDGE CARISSIMI: Very good. Let's go off the record.

7 (Off the record.)

8 JUDGE CARISSIMI: Back on the record.

9 Any further questioning, Mr. Kadela?

10 MR. KADELA: Thank you, Your Honor. Those are all the
11 questions I have. Thank you, Dr. Peatross.

12 THE WITNESS: Thank you.

13 JUDGE CARISSIMI: Very good.

14 Is there any redirect examination by the Acting General
15 Counsel?

16 MS. BRAZEAL: No.

17 JUDGE CARISSIMI: And redirect examination by counsel
18 for the Charging Party?

19 MS. REBHORN: I do have a few questions.

20 JUDGE CARISSIMI: You may proceed.

21 MS. REBHORN: Thank you, Your Honor.

22 **REDIRECT EXAMINATION**

23 Q. BY MS. REBHORN: Dr. Peatross, you were asked a couple
24 of questions about attendance at meetings during the summer
25 of 2011.

1 A. Uh-huh.

2 Q. You don't remember if Tonya DeVore was at a meeting
3 where First Student was present?

4 A. Are you asking specifically in the summer at the bus
5 garage?

6 Q. I'm not sure where the location would be.

7 A. Okay, no.

8 Q. So you don't remember?

9 A. I don't recall her being at a meeting where I was there
10 with First Student.

11 MS. REBHORN: Okay. Your Honor, may I approach the
12 witness?

13 JUDGE CARISSIMI: You may.

14 MS. REBHORN: Dr. Peatross, I'm going to show you
15 something that I think may refresh your recollection about
16 that summer.

17 I'm showing Dr. Peatross what I've marked as Charging
18 Party's Exhibit 9.

19 **(Charging Party's Exhibit 9 marked for identification.)**

20 JUDGE CARISSIMI: Thank you.

21 Q. BY MS. REBHORN: Have you reviewed Charging Party's
22 Exhibit 9, Dr. Peatross?

23 A. Yes.

24 Q. I understand the format is weird because I printed it
25 out from my e-mail, but other than the top of the document,

1 can you tell us what this is?

2 A. Yes, it's an e-mail from myself to members of the
3 transportation department, including Ms. DeVore.

4 Q. And when you say the transportation department, what is
5 that?

6 A. Representatives, employees that Ms. DeVore represents.

7 Q. So bus drivers and monitors?

8 A. Uh-huh, yes.

9 Q. And does that e-mail refresh your recollection about
10 whether the Union and/or the bargaining unit attended a
11 meeting where First Student and you were also present that
12 summer?

13 A. Yes, I will state, though, that you asked the question
14 if Ms. DeVore was in attendance at a meeting for the
15 interviews that took place, and what I indicated was that,
16 yes, she was there, but I did not believe that she was there
17 for all three, and I recall a conversation that I had with
18 Ms. DeVore where she indicated she couldn't be there but she
19 still wanted the materials which were provided and then
20 returned to the district.

21 Q. Okay, so you're still not sure if she was actually
22 present at that meeting that's referred to in this e-mail?

23 A. I'm saying that she was present for the presentations,
24 but whether or not she was there on this particular day or
25 the other day, because this just references two of the three

1 interviews.

2 Q. Okay. Thank you for explaining.

3 A. Yes.

4 Q. First Student made no commitment about hours. Did
5 Mr. Kinsley or anyone who was speaking for First Student say
6 anything about hours?

7 A. There was no commitment to the hours, specifically the
8 hours were determined based on the routes, so I do not recall
9 Mr. Kinsley ever speaking to hours that would be provided to
10 the bus drivers and/or an hour commitment.

11 Q. When you encouraged the parties, First Student and the
12 Union, to negotiate a collective bargaining agreement, what
13 exactly did you say?

14 A. What I shared with them, because there was a concern
15 from the employees that the contract was going to expire, and
16 their concern was healthcare and having continuing coverage,
17 so there was an agreement that was made between First Student
18 and the district where we continued to provide coverage for
19 the employees until such time that the benefits were agreed
20 to, so we paid up front those amounts or costs, and then we
21 were reimbursed by First Student for providing that service,
22 but what I shared with them is because of the contract
23 expiring and because we wanted to make sure that there was a
24 smooth transition, and that benefits and the like were in
25 place for the employees, that it was encouraged by both

1 parties to begin that negotiating before the contract
2 expired.

3 Q. And you said it was encouraged by both parties? Can you
4 explain that?

5 A. It was encouraged by me for both parties.

6 Q. Okay. On what date did you give that encouragement?

7 A. It was on the date that First Student was actually
8 present when we had the meeting, so I would -- it was after
9 the board took action.

10 Q. And what date are you referring to when you say took
11 action?

12 A. I would say that it happened after the May meeting.

13 Q. Okay.

14 A. So 2012.

15 Q. What health plan and what pension plan were the bus
16 drivers and monitors participating in when they were school
17 district employees?

18 A. When they were school district employees, I believe they
19 were with either Health Plus or Blue Care Network.

20 Q. And is that a plan that's open to private and public
21 sector employees?

22 A. I would assume so, but I can't confirm.

23 Q. Who was the sponsor of the plan that they participated
24 in?

25 A. The sponsor meaning?

1 Q. Who paid for it, who provided that plan to them?

2 A. The district is the holder of the insurance, but -- and
3 we paid 85 percent of that premium for the employees.

4 Q. So that's a plan that's available to district employees?

5 A. Yes.

6 Q. And do you know what the name of the pension plan that
7 the district employees, that the bus drivers and monitors
8 when they worked for the district, that they were enrolled
9 in?

10 A. It's not a district plan, it's a state plan, and it's
11 the Michigan School Employees Retirement System.

12 Q. So that's open to public employees throughout the state?

13 A. Correct.

14 Q. And it's not open to private sector employees?

15 A. That is correct.

16 Q. So the benefits that the bargaining unit was supposed to
17 get when they became First Student employees, those
18 comparable benefits were as close as one could get to the
19 district's benefits?

20 A. Comparable benefits meaning healthcare, dental, and
21 vision.

22 MS. REBHORN: Thank you. I have no further questions.

23 THE WITNESS: Sure.

24 JUDGE CARISSIMI: You used CP-9 to refresh recollection.

25 You don't --

1 MS. REBHORN: Oh, I would also like to move to admit
2 Charging Party 9.

3 JUDGE CARISSIMI: Is there any objection to Charging
4 Party Exhibit 9?

5 MR. KADELA: No objection, Your Honor.

6 JUDGE CARISSIMI: Charging Party -- I take it none from
7 the General Counsel?

8 MS. BRAZEAL: No.

9 JUDGE CARISSIMI: Charging Party Exhibit 9 is admitted.
10 **(Charging Party's Exhibit 9 received in evidence.)**

11 JUDGE CARISSIMI: Mr. Kadela, do you have any recross
12 within that limited range?

13 MR. KADELA: Just a few questions.

14 **RECROSS-EXAMINATION**

15 Q. BY MR. KADELA: Dr. Peatross, the bus driver and aides
16 unit did not participate on the state pension plan; is that
17 true?

18 A. As an employee of the district, any employee of the
19 district, the district pays into the retirement system on
20 their behalf.

21 Q. That was not part of their collective bargaining
22 agreement though?

23 A. No.

24 Q. And the benefits to which, or for which the district was
25 looking for a commitment, I thought I heard you say

1 healthcare, dental, and vision?

2 A. Yes.

3 Q. And I mentioned the number 17 members of the bargaining
4 unit participating in the district's healthcare plan; do you
5 have any idea how many of the employees in the unit
6 participated in the district healthcare plan?

7 A. No.

8 MR. KADELA: I have nothing further.

9 JUDGE CARISSIMI: I take it there's no questions within
10 that limited range, correct?

11 MS. BRAZEAL: No

12 JUDGE CARISSIMI: Very good.

13 Dr. Peatross, you're excused as a witness. Thank you
14 very much.

15 THE WITNESS: Thank you.

16 JUDGE CARISSIMI: You may step down.

17 THE WITNESS: Shall I leave these here?

18 JUDGE CARISSIMI: You can leave those there.

19 **(Witness excused.)**

20 **JUDGE CARISSIMI: Let's go off the record.**

21 **(Off the record.)**

22 **JUDGE CARISSIMI: On the record.**

23 Does the Acting General Counsel have any further
24 witnesses?

25 MS. BRAZEAL: No, I don't.

1 JUDGE CARISSIMI: Are you prepared to rest your case?

2 MS. BRAZEAL: Yes, I rest my case.

3 JUDGE CARISSIMI: Does the Charging Party have any
4 independent witnesses they wish to present?

5 MS. REBHORN: We have no witnesses, Your Honor.

6 JUDGE CARISSIMI: Mr. Kadela, are you prepared to begin
7 the Respondent's case?

8 MR. KADELA: We will be prepared in just a couple of
9 minutes, Your Honor.

10 JUDGE CARISSIMI: Very good. Let's go off the record
11 and we'll be in recess for 10 minutes.

12 (Off the record.)

13 JUDGE CARISSIMI: Back on the record.

14 Mr. Kadela, you may call your first witness.

15 MR. KADELA: Thank you, Your Honor. We call
16 Robert Bradley.

17 (Whereupon,

18 **ROBERT BRADLEY**

19 was called as a witness by and on behalf of the Respondent
20 and, after having been first duly sworn, was examined and
21 testified as follows:)

22 JUDGE CARISSIMI: Please have a seat.

23 **DIRECT EXAMINATION**

24 Q. BY MR. KADELA: Mr. Bradley, could you begin by stating
25 and spelling your full name?

1 A. Robert Bradley, R-o-b-e-r-t B-r-a-d-l-e-y.

2 Q. Mr. Bradley, who do you work for at the present time?

3 A. Sodexo.

4 Q. And how long have you worked for Sodexo?

5 A. Approximately 2½ years.

6 Q. And what's your position with Sodexo?

7 A. General manager.

8 Q. Of what?

9 A. Facilities.

10 Q. Over what?

11 A. Saginaw Public Schools.

12 Q. And where did you work before that?

13 A. I worked for Saginaw Public Schools.

14 Q. In what position?

15 A. The operations manager.

16 Q. Over what?

17 A. Facilities.

18 Q. And facilities consisted of what?

19 A. Grounds, maintenance, and custodial.

20 Q. How did you happen to land a job with Sodexo?

21 A. I was an existing employee, and the district elected to
22 outsource those particular jobs, and I had applied,
23 interviewed, and was selected for the general manager
24 position through Sodexo.

25 Q. Now, before I forget, are you appearing today under

1 subpoena?

2 A. Yes.

3 Q. Now, I'd like to take you back to the summer of 2011.
4 Were you involved in the RFP process for the Saginaw Public
5 School System's outsourcing of transportation work?

6 A. Yes.

7 Q. And in that connection did you attend the interview
8 meetings that the school district had with the prospective
9 vendors, specifically First Student, Dean, and Mets?

10 A. Yes.

11 Q. Did you attend, at the meeting with First Student, do
12 you recall who was in attendance?

13 A. The district side would have been myself, Dan Lapan,
14 Pheobe Wood, Dr. Peatross, I believe Anitra Sweeny.

15 Q. And for First Student?

16 A. Dan Kinsley, Jim Wood, and I believe Doug Meek; I'm not
17 for sure.

18 Q. Okay. Do you recall how long that meeting lasted?

19 A. No, I don't.

20 Q. And where was the meeting at?

21 A. Board of Education.

22 Q. Do you recall there being any questions asked or any
23 discussion regarding whether First Student would recognize
24 the Steelworkers Union if it was awarded the contract?

25 A. Yes.

1 Q. Tell us what you recall.

2 A. I remember the question being posed to First Student as
3 it was to each one of the companies, I believe by Ms. Tonya,
4 would they recognize the Steelworkers Union.

5 JUDGE CARISSIMI: And that's Tonya DeVore?

6 THE WITNESS: Yes, sir.

7 Q. BY MR. KADELA: And what was the answer?

8 A. Yes, as long as they hired 51 percent of the group, I
9 believe was the answer.

10 Q. Do you recall there being any discussion or questions
11 asked regarding whether or not, whether First Student would
12 hire existing employees?

13 A. Yes.

14 Q. What do you recall about that?

15 A. I remember the question being asked to each one of the
16 companies, not just First Student, and they all pretty much
17 answered the same way, and you would have to, employees would
18 go through their process, and as long as they passed through
19 it, they would offer them employment.

20 Q. Do you recall was there any discussion about what the
21 process consisted of?

22 A. The physical, the drug screen, and I think there was one
23 more component, but I just don't remember.

24 Q. Did you attend a meeting on or about March 2, 2012 with
25 First Student, other district representatives, and members of

1 the Steelworkers bargaining unit?

2 A. Yes.

3 Q. Who do you recall being in attendance at that meeting?

4 A. All the employees were invited. Myself, Dr. Peatross
5 were the district representatives, and I believe
6 Dan Kingsley, Doug Meek, and possibly Jim Woods from First
7 Student.

8 Q. Do you recall any presentation by anyone from First
9 Student?

10 A. Any presentation?

11 Q. And talk that they gave to the employees, or what kind
12 of format was the meeting?

13 A. That's what it was. It was like a question and answer.
14 The employees had a lot of questions. We wanted to
15 facilitate a meeting where the employees would have that
16 interaction with First Student.

17 Q. Okay. Do you recall any of the questions that were
18 asked?

19 A. Some of the questions. I know one of the biggest
20 stumbling points or issues that the employees had at that
21 time was would their existing contract transfer over to First
22 Student.

23 Q. What do you recall being said about that?

24 A. I do recall Dr. Peatross answered that question, and she
25 just pretty much explained to them that they're district

1 employees now, and if they sign the contract with First
2 Student, they would have to negotiate a new contract with
3 First Student.

4 Q. Do you recall there being any questions asked of the
5 First Student reps that were there?

6 A. Yeah.

7 Q. Okay, do you remember any questions being asked about
8 hours of work?

9 A. Yes.

10 Q. Do you recall who responded to that?

11 A. Doug Meek responded to those questions, and it was a few
12 of those same types of questions from different employees of
13 hours and pay.

14 Q. What do you recall how those questions were answered?

15 A. The explanation that First Student gave was that they
16 wouldn't know that until the routes were determined, wouldn't
17 know the total hours at that point.

18 Q. Do you recall there being any discussion of sick pay,
19 vacation, holidays, or any of those matters?

20 A. I don't recall, no.

21 Q. Do you recall there being any questions that were asked
22 or any responses given to any questions in terms of whether
23 there would be negotiations? Any matters would be subject to
24 negotiations, do you remember that coming up?

25 A. Yes.

1 Q. Tell us what you remember about that.

2 A. You know, like I said, about the contract, when they
3 were asking whether or not the contract was transferable, and
4 obviously not, we explained to them then.

5 Q. Do you remember there being any discussion about any
6 specific terms of employment that would be negotiable?

7 A. No, I don't.

8 Q. Let's go to May 16th, 2012. Did you attend the board
9 meeting that night at which First Student was, the board
10 voted to approve a contract with First Student?

11 A. Yes, sir.

12 Q. And do you recall Dan Kinsley speaking at that meeting?

13 A. Yes.

14 Q. Do you recall how he happened to come to speak?

15 A. He was asked. Of course you got to be invited to the
16 pulpit at a board meeting by the superintendent.

17 Q. Do you recall his being asked a question about whether
18 First Student would recognize the Union?

19 A. Yes.

20 Q. Okay. How do you recall his responding?

21 A. He responded the same way he did to the employees, that
22 if they hired 51 percent of the employees, they would have
23 to.

24 Q. Do you recall him being asked about First Student's
25 hiring plans?

1 A. Hiring plans?

2 Q. Whether they would hire existing employees?

3 A. Yes.

4 Q. What do you remember him answering in response to that
5 question?

6 A. They would offer all the employees a position as long as
7 they passed the process.

8 Q. And, again, the process involved background check,
9 physicals --

10 A. Physical and drug screen, right.

11 Q. When the meeting ended, what did you do?

12 A. When the meeting ended, what?

13 Q. The board meeting ended. Did you walk out with anyone?

14 A. Yes, I was leaving rather quickly with Dan Kinsley.

15 Q. Okay. And tell us what happened on your way out.

16 A. Dan Kinsley was informed by Tonya that he needed 50
17 percent plus one, not 51 percent.

18 Q. Okay. She -- did she speak the first words to him?

19 A. Yes.

20 Q. Okay.

21 A. She was outside the building meeting with some
22 employees, and we were just pretty much walking by.

23 Q. And as best as you can recall, what did she say?

24 A. She said, "You need 50 percent plus one, not 51 percent,
25 and you should know that."

1 occasions where the Company has hired 51 percent of the
2 employees but the Union didn't request recognition?

3 MS. REBHORN: Again, I object. Let's hear testimony
4 about Saginaw, if he has any.

5 JUDGE CARISSIMI: Yeah, again --

6 MR. KADELA: I covered this in my opening, Your Honor.

7 JUDGE CARISSIMI: -- I've heard enough of this.

8 MR. KADELA: I'm just trying to complete my opening in
9 terms of the practice.

10 MS. BRAZEAL: Yeah, we object --

11 JUDGE CARISSIMI: I think there's been enough of that,
12 Mr. Kadela, and we have a lot relevant issues in this case,
13 so let's get to those now. The background is established.

14 Q. BY MR. KADELA: All right. Let's talk then about
15 Saginaw, Mr. Meek. In your role as an area manager,
16 operations manager, were you involved in the transition from
17 the Saginaw Public Schools to First Student?

18 A. Yes.

19 Q. And in that connection, do you recall attending a
20 meeting on March 2, 2012?

21 A. Yes.

22 Q. Do you recall how that meeting was set up?

23 A. It was set up at the request of the administration.

24 Q. And do you recall specifically who from the
25 administration?

1 A. Dr. Peatross, assistant superintendent.

2 Q. And who was the meeting set up with?

3 A. It was set up with the employees of the school district
4 transportation department.

5 Q. And who attended the meeting?

6 A. Bus attendants, drivers, mechanics, clerical staff,
7 Mr. Bradley from Sodexo, and Dr. Peatross, and myself and
8 Dan Kinsley.

9 Q. Do you recall how the meeting started?

10 A. Yes. We were introduced by Dr. Peatross.

11 Q. And what happened after you -- when you say you were
12 introduced, you're referring to yourself and Mr. Kinsley?

13 A. Yes.

14 Q. And what happened after that?

15 A. Following the introduction, presented an overview of our
16 company, what we're all about, our experience in Michigan,
17 and the process by which individuals would be completing the
18 applications and coming to work for, or submitting
19 applications to First Student recognizing that many, if not
20 all of the workforce, had not completed an application for a
21 new employer for a period of time.

22 Q. And do you recall specifically what you discussed in
23 that regard?

24 A. Yes. The fact that you'll be receiving an application
25 form in a forthcoming meeting in the event that the board

1 should award a contract to First Student, and said that at
2 that time that Mr. Kellerman, a region HR manager, and I
3 would be present at that meeting, and that in completing an
4 application form, complete every square that requests an
5 answer, and if it does not apply, you know, indicate N/A, and
6 that we'll be there to answer questions for you during that
7 period of time should it occur.

8 Q. What was the next topic that you discussed?

9 A. The next topic I discussed was our training process, in
10 that existing drivers from the school system did not go
11 through the 55 hours of a new bus driver training program.
12 Their training hours are less based upon their experience.
13 And then following that completion of training of classroom
14 and behind the wheel, and successful completion of the
15 application form and the necessary requirement background
16 checks, which we meet state requirements for hiring bus
17 drivers, and our review to make sure that the physicals, the
18 pre-employment drug screen and all the necessary
19 documentation is in play, then offers of employment would be
20 extended to those whom we felt that met all of our criteria.

21 Q. And what did you discuss after that?

22 A. There was a point in time after that that it became Q&A
23 from the floor.

24 Q. And do you recall some of the questions you received?

25 A. Yes. How many holidays do we get. There was a question

1 about how many you're going to hire. I referenced that
2 typically in a conversion, that we wanted to hire as many
3 individuals as possible; that typically we hired 80 to 90
4 percent of the existing workforce, and when we do so, they
5 bring with them the representation should they be organized,
6 have a union representation they bring with them, but we
7 negotiate a new labor agreement.

8 Q. Did you talk to them at what point the Company -- talk
9 about at what point the Company would recognize the Union?

10 A. Only after they followed the necessary process.

11 Q. What about in terms of the number of employees that
12 would have to be hired?

13 MS. REBHORN: I object. That's a leading question.

14 JUDGE CARISSIMI: I'll sustain the objection to that.

15 MR. KADELA: I have no idea how that suggests the
16 answer.

17 JUDGE CARISSIMI: What's the question again?

18 MR. KADELA: I said what about the number of employees
19 who would have to be hired before the Company would recognize
20 the Union?

21 JUDGE CARISSIMI: I reconsider. I'll let you answer
22 that question.

23 THE WITNESS: As I stated previously, it's 51 percent of
24 the existing workforce.

25 Q. BY MR. KADELA: Do you recall mentioning that at that

1 meeting?

2 A. More than once.

3 Q. Do you recall there being any discussion or any
4 questions about hours?

5 A. Yes.

6 Q. What do you recall about that?

7 A. The question was how many hours are we going to be
8 guaranteed. My response to that is that we don't know what
9 the routes are going to be for next school year. It's an
10 hourly job based upon hours of work, and we'll know more
11 about that when we do the bus routes.

12 Q. Did you discuss how First Student does bus routes?

13 A. Yes, I did. In the Saginaw situation, we were using the
14 district's routing system. Sometimes we use a district
15 routing system. Other times we will bring our own licensing
16 in, and at times another division of our company will assist
17 us in doing the routing.

18 Q. Do you recall discussing any other, or being asked any
19 other questions relating to the terms and conditions under
20 which employees would work --

21 A. There were various --

22 Q. -- if First Student were selected?

23 A. There were various questions that were raised, and I
24 said more than once that it's subject to negotiations.

25 Q. Did you recall Dr. Peatross saying anything at the

1 meeting regarding that subject?

2 A. I recalled her indicating that First Student is a new
3 employer; as such you'll be under the work rules of that
4 company should you get hired.

5 Q. Do you recall anything else about that meeting?

6 A. There was repetitive questions about hours of work, how
7 much are we going to get paid.

8 Q. What did you say in response to that?

9 A. Subject to negotiations.

10 Q. Any other questions you remember being asked?

11 A. When will we know we're going to be a First Student
12 employee?

13 Q. How did you answer that?

14 A. After we complete the process that we go through and
15 that the individual successfully completes the classroom and
16 pre-employment background checks, then offers of employment
17 are extended to the individuals.

18 Q. Is there anything else you remember about that meeting?

19 A. They asked about the process, asked about their union,
20 asked about compensation, days off.

21 Q. What do you remember being asked about the Union?

22 A. Whether we were going to recognize it or not, and I
23 repeatedly said more than once, as I previously testified,
24 that if 51 percent, that they bring with them their
25 representation but not their contract, and we follow the

1 process that's required of us as a new employer.

2 Q. Does that about cover everything you recall?

3 A. Yes.

4 Q. All right. Did you attend a meeting on May 17 with the
5 employees?

6 A. Yes, I did.

7 Q. Was that after the board voted to award the contract to
8 First Student?

9 A. Yes.

10 Q. Who was in attendance in that meeting?

11 Before I ask you that, how long did that meeting on
12 March 2nd last?

13 A. About an hour, maybe a little more than that. There
14 were some drivers that had to leave because they had some
15 route assignments, and we hung around. We stayed a little
16 longer to answer questions of those individuals that
17 remained. The objective of the meeting per the request of
18 the administration was to reduce the anxiety, if you will, of
19 the employees, let them have an understanding of what it's
20 like to come to work for a new employer, some of the steps
21 that would be necessary during that process.

22 Q. Okay, let's go to May 17th. Where was that meeting
23 held?

24 A. Transportation facility, Flint School District.

25 Q. And how long a meeting was it?

1 A. About the same time in length, maybe a little longer.

2 Q. And who was in attendance there?

3 A. On behalf of First Student, myself, and Rick Kellerman,
4 and Dan was also there, Dr. Peatross from the school district
5 was there, and I believe Mr. Bradley was also there. And
6 Mr. John Kiraly, whom we had hired as transportation
7 supervisor and formerly worked for the school district.

8 Q. And how many of the employees were there?

9 A. It was a full house. The room can handle probably 50
10 people packed in.

11 Q. How did that meeting start?

12 A. Again, introduction from Dr. Peatross.

13 Q. And what happened after that?

14 A. After that I did a quick introduction, indicating to the
15 individuals that it was nice to see them again from our
16 previous meeting, and I and Rick Kellerman, a region HR
17 manager, we'd be going through several questions and answers
18 that we typically have as well as the process.

19 Q. Mr. Meek, I'm going to show you what's been introduced
20 as General Counsel Exhibit Number 5. Do you recognize that?

21 A. Yes, I do.

22 Q. What is that?

23 A. That is a document prepared by First Student that was
24 distributed at the meeting, so noted on the form, on the 17th
25 of May 2012.

1 Q. And was that document discussed at the meeting?

2 A. Yes, it was.

3 Q. And who went over that document?

4 A. Myself and Rick Kellerman. I did the initial page one
5 overview of who's here and who they may be seeing from First
6 Student during the process and that Rick would go through the
7 other components of it.

8 Q. And was anything else distributed to the employees at
9 that time?

10 A. Yes.

11 Q. What else?

12 A. It was the employment package, which includes their
13 release so we could do the background checks, completion of
14 the application form, and the requirements of a school bus
15 driver. Or I should say the requirements of an individual
16 that can become a school bus driver.

17 Q. Was there anything else that was covered in the
18 presentations?

19 A. We again had questions about are you going to recognize
20 the Union and the response was, as I had previously stated,
21 it's 51 percent; bring with them the representation, we
22 negotiate a new contract.

23 Q. Any other questions you can recall?

24 A. Questions about benefits came up, holidays, some of
25 those things. Again, what about routes, what about our

1 report time; in many cases, it was the repeat of the
2 questions from the previous meeting.

3 Q. Following that meeting, do you recall receiving a
4 telephone call from Tonya DeVore?

5 A. Yes.

6 Q. What do you remember about that conversation?

7 A. I was rather to the point and said I have nothing to
8 talk to you about. You need to speak to our legal department
9 at First Group America.

10 Q. Do you recall what she said to you that led you to say
11 that?

12 A. She asked about recognizing the Union.

13 MR. KADELA: Thank you. Those are all the questions I
14 have.

15 JUDGE CARISSIMI: Cross-examination by the Acting
16 General Counsel?

17 MS. BRAZEAL: Yes, if I could have just a couple
18 minutes?

19 JUDGE CARISSIMI: Yes, that's good.

20 MS. BRAZEAL: Okay.

21 JUDGE CARISSIMI: Let's go off the record.

22 (Off the record.)

23 JUDGE CARISSIMI: Back on the record.

24 Ms. Brazeal, you may cross-examine.

25 **CROSS-EXAMINATION**

1 Q. BY MS. BRAZEAL: Hi, Mr. Meek. My name is
2 Jennifer Brazeal, and I'm with Counsel for the General
3 Counsel, National Labor Relations Board. And you attended a
4 meeting in March with Dr. Peatross, the bus employees, and
5 First Student; is that correct?

6 A. I just testified to that, yes.

7 Q. Okay. And you said, you know, employees asked about
8 hiring, if they would be hired; is that right?

9 A. Yes.

10 Q. Okay. And your response is typically we hire between 80
11 and 90 percent of the workers; is that correct?

12 A. Based upon my experience, that is correct.

13 Q. Did you expect that First Student would hire 80 to 90
14 percent of the workers?

15 MR. KADELA: Objection.

16 JUDGE CARISSIMI: Overruled.

17 THE WITNESS: I did not know in this case because I had
18 no background on those individuals that would be applying.

19 MS. BRAZEAL: Okay.

20 THE WITNESS: And I did not know how many would apply.

21 Q. BY MS. BRAZEAL: But your experience was 80 to 90
22 percent of the workers from predecessor companies are usually
23 hired by First Student once First Student takes over?

24 A. No.

25 Q. That's what you just testified --

1 JUDGE CARISSIMI: No, don't tell --

2 THE WITNESS: You just --

3 JUDGE CARISSIMI: -- the witness what his testimony is.

4 THE WITNESS: You just said predecessor companies --

5 JUDGE CARISSIMI: Hold it, sir. Sir? When I speak --

6 THE WITNESS: Excuse me.

7 JUDGE CARISSIMI: -- everybody is quiet. That's the way
8 it has to be in these things.

9 Now, I've indicated clearly I don't want references to
10 testimony. Questions can be asked in a way that's a question
11 without statements by lawyers about prior testimony.

12 MS. BRAZEAL: Okay.

13 JUDGE CARISSIMI: That's the last time I'm going to make
14 this point. Hopefully.

15 Q. BY MS. BRAZEAL: Okay. I want to go to the May 17th
16 meeting. Do you recall that meeting?

17 A. Yes.

18 Q. And who was present on behalf of First Student?

19 A. Myself, Rick Kellerman, region human resource manager.

20 Q. And about 40 to 50 employees were present in that
21 meeting; is that true?

22 A. I'd say that's probably a good count.

23 Q. Okay.

24 A. The room could hold more.

25 Q. And during this meeting, you or Mr. Kellerman passed out

1 General Counsel's Exhibit 5, which was shown to you. I don't
2 know if you have a copy of it. It's the letter. Do you have
3 that with you?

4 A. That's correct.

5 Q. And did you go over that letter with the employees?

6 A. I went over part of it.

7 Q. Mr. Kellerman went over the rest of it; is that true?

8 A. Correct.

9 Q. And isn't it true that the employees expressed anger
10 with respect to what was being told to them about the
11 contents of that letter?

12 A. You're using the word anger.

13 Q. Well --

14 A. I did not say that.

15 JUDGE CARISSIMI: Well, it doesn't matter what she --
16 what you said, sir. You have a question, and I'd like you to
17 answer the question.

18 THE WITNESS: I'm going to say the answer to that
19 question is no.

20 Q. BY MS. BRAZEAL: Okay. Isn't it true that the employees
21 expressed dissatisfaction with the --

22 MR. KADELA: Objection, Your Honor. What they expressed
23 is irrelevant.

24 MS. BRAZEAL: Well, I believe that it is relevant
25 because --

1 JUDGE CARISSIMI: How so?

2 MS. BRAZEAL: I believe that it's relevant because it
3 shows that what was told to -- it is probative to showing
4 that what was told to them on May 17th was different and that
5 it was different, and what their reaction was can show
6 whether this was something new or if it was consistent to
7 what was told to them before.

8 JUDGE CARISSIMI: That's a premise that's pretty far
9 afield. If you want to ask about specific questions made,
10 but asking this witness to gauge the subjective reaction to
11 the employees there is not something I think is probative,
12 and I'm not going to permit it, so I'm going to sustain the
13 objection to the particular question that you asked.

14 Q. BY MS. BRAZEAL: All right. Mr. Meek, isn't it true
15 that at least one employee asked about wages during the
16 May 17th meeting?

17 A. Yes.

18 Q. Isn't it true that at least one employee said we thought
19 wages were going to remain the same? And that's just a yes
20 or no question as to -- it's just a yes or no question, sir.

21 MS. REBHORN: Your Honor, we request to read what the
22 witness is consulting.

23 JUDGE CARISSIMI: It's GC-5.

24 MS. REBHORN: Okay.

25 JUDGE CARISSIMI: Do you wish him to take it away? It's

1 the May 17th meeting.

2 MS. REBHORN: No, I just wanted to know what he was
3 reading.

4 JUDGE CARISSIMI: That's what it is. But if, you know,
5 if anybody has a problem with it, they can be taken away from
6 the witness.

7 MS. BRAZEAL: Well, I really just want to know, I wanted
8 a response to my question.

9 JUDGE CARISSIMI: I understand. The witness was, I
10 think, considering his answer.

11 Are you ready to answer now, sir?

12 THE WITNESS: I am ready to answer the question. The
13 answer to the question is yes.

14 MS. BRAZEAL: Okay.

15 THE WITNESS: With a caveat.

16 JUDGE CARISSIMI: No.

17 MS. BRAZEAL: No, it's just --

18 JUDGE CARISSIMI: You just answer the question. Counsel
19 will get a chance to ask you other questions if he thinks
20 there's something else to bring up.

21 Q. BY MS. BRAZEAL: What was the purpose of meeting with
22 the employees on May 17th?

23 A. The purpose of the meeting on May 17th was to introduce
24 the Company again and provide them applications for
25 employment.

1 Q. Okay. Isn't it true that you welcomed the employees to
2 First Student -- to the First Student organization?

3 A. I may have said that we welcome you for the opportunity
4 to join First Student.

5 Q. Okay. With respect to the May 17th meeting, isn't it
6 true that you or Mr. Kellerman said that First Student would
7 hire employees if they met the requirements? Met First
8 Student's requirements? Let me rephrase that question.

9 Isn't it true that on May 17th, either you or
10 Mr. Kellerman said that First Student would hire employees if
11 they met First Student's hiring requirements?

12 A. I did not speak for Mr. Kellerman. I only spoke for
13 myself.

14 Q. Did you say anything with respect to hiring during the
15 May 17th meeting?

16 A. Yes.

17 Q. And what did you say?

18 A. I repeated what I had said previously in the previous
19 meeting.

20 Q. Which -- okay.

21 A. Which I already --

22 Q. And that was typically First Student hires between 80
23 and 90 percent of the workers from the other company?

24 A. No.

25 Q. What did you say on May 17th with respect to hiring?

1 A. I said in a situation that we typically hire more than
2 80 percent based upon my experience. We would welcome
3 individuals to apply to First Student. And when we hire more
4 than 51 percent of the existing workforce, they bring with
5 them their representation and not their labor contract.

6 Q. And you said this to relieve the anxiety of the
7 employees?

8 A. Yes, I did. More than once.

9 Q. That's fine. Please let me finish my questions.

10 JUDGE CARISSIMI: You weren't finished?

11 MS. REBHORN: He just cut me off on that last one.

12 JUDGE CARISSIMI: All right, because -- well, all right.
13 If you had a further question to ask -- but it sounded like
14 there was a pause there; I thought it was ended. But go
15 ahead.

16 Q. BY MS. REBHORN: At the May 17th meeting, the first
17 thing you said was, "Welcome to First Student"; that's right?

18 A. I do not remember saying specifically as you just stated
19 that I said, so the answer to that question is no.

20 Q. That was the first thing that Mr. Kellerman said,
21 "Welcome to First Student"?

22 A. I don't know -- recall what he specifically said at the
23 beginning.

24 Q. And at that meeting the employees who attended before
25 that, they had no clue about this two-tiered wage system for

1 which they had not previously had.

2 MR. KADELA: That's all I have.

3 JUDGE CARISSIMI: Very good. I take it there's nothing
4 within that one question that anybody needs to ask?

5 MS. REBHORN: Actually there is, Your Honor.

6 JUDGE CARISSIMI: All right.

7 MS. REBHORN: Just one question.

8 **RECROSS-EXAMINATION**

9 Q. BY MS. REBHORN: So the caveat is that the employees
10 were complaining about this two-tiered wage system?

11 A. The answer to that question is no.

12 Q. That's what employees were talking about at this
13 meeting.

14 A. That's one of the things that they were talking about.
15 We were there for over an hour.

16 Q. And they were complaining about the two-tiered wage
17 rate?

18 A. No.

19 Q. They were happy?

20 MR. KADELA: Objection.

21 JUDGE CARISSIMI: Sustained.

22 Q. BY MS. REBHORN: What did they say, Mr. Meek?

23 A. My recall is that we told them what our pay rates were
24 going to be, and it was different because we're a new
25 employer --

1 Q. I --

2 A. -- and we're not the school district.

3 Q. I asked you what they said. What did they say?

4 A. I don't recall specifically what they said, counselor.
5 What I do remember is that we had a meeting for over an
6 hour --

7 JUDGE CARISSIMI: That's okay.

8 THE WITNESS: -- and I've already stated it.

9 JUDGE CARISSIMI: Sir, if you say you don't remember,
10 that's your answer. You don't need to go beyond that.
11 Please just answer the questions as they're asked.

12 Q. BY MS. REBHORN: You don't remember what they said about
13 two-tiered wage rates?

14 A. Not specifically, no.

15 MS. REBHORN: Thank you. No further questions.

16 JUDGE CARISSIMI: Very good.

17 And I take it we have no further questions of Mr. Meek,
18 and you are excused as a witness, sir.

19 THE WITNESS: Thank you, sir.

20 JUDGE CARISSIMI: You may step down.

21 **(Witness excused.)**

22 JUDGE CARISSIMI: **Let's go off the record.**

23 **(Off the record.)**

24 JUDGE CARISSIMI: **Let's go back on the record.**

25 All right, it's 10 minutes to 6:00. I indicated earlier

TAB 3

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7

In the Matter of:

FIRST STUDENT, INC., A DIVISION
OF FIRST GROUP AMERICA,

Respondent,

and

LOCAL 9036, UNITED STEEL, PAPER
AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION (USW),
AFL-CIO,

Charging Union,

and

SAGINAW SCHOOL DISTRICT,

Party in Interest.

Case No. 07-CA-092212

The above-entitled matter came on for hearing pursuant to notice, before **MARK CARISSIMI**, Administrative Law Judge, at **Saginaw Courthouse, 111 South Michigan Avenue, Room 200, Saginaw, Michigan**, on **Friday, July 26, 2013**, at **9:00 a.m.**

1 Q. And what's your position with the Company?

2 A. I'm a business development manager for the state of
3 Michigan.

4 Q. Have you held that position the entire time you've been
5 with the Company?

6 A. Yes.

7 Q. Can you briefly describe for us your duties as business
8 development manager?

9 A. I meet and consult with school districts in the benefits
10 of privatizing transportation services.

11 Q. In the course of your job, have you become familiar with
12 the nature of First Student's business and its operations?

13 A. Yes.

14 Q. We've not previously had a witness just provide us with
15 that overview. If you could do that for us now, tell us
16 about the Company?

17 A. We are the largest provider of student/pupil
18 transportation in the state of -- or excuse me, in North
19 America. We operate 18 districts here in the state of
20 Michigan with over 980 school buses. Nationally, we employ
21 over 59,000 people and transport approximately 6 million
22 children every day.

23 Q. Were you involved in the bid to provide transportation
24 services to the Saginaw Public School System?

25 A. Yes, I was.

1 Q. Can you tell us about your involvement in that?

2 A. I received the RFP submitted to -- from -- submitted to
3 us from Saginaw Public Schools.

4 Q. When was that around?

5 A. June of 2011.

6 Q. Okay.

7 A. As I recall.

8 Q. And what did you do after receiving the RFP?

9 A. I took some notes on the RFP and reached out to my
10 manager to review what the district was requesting.

11 Q. And who was your manager at that time?

12 A. Justin Grygiel.

13 Q. How do you spell his last name?

14 A. G-r-y-g-i-e-l.

15 Q. What'd you do after that?

16 A. We made the decision to pursue the opportunity with the
17 district, and we formulated a plan to schedule calls to get
18 many other levels of the Company involved in our final
19 proposal for the district.

20 Q. And when was that proposal submitted around?

21 A. July, late July as I recall.

22 Q. And after the proposal was submitted, what was the next
23 step in the process?

24 A. We were to interview with the district and answer any
25 questions they had for clarification regarding our proposal.

1 Q. And do you recall when that interview was?

2 A. Not the specific date. I recall it was late July.

3 Q. Okay. And where was that -- did you participate in that
4 meeting?

5 A. I did.

6 Q. Okay. Where was the meeting held?

7 A. That was held at the Saginaw Public Schools
8 Administration Building in their conference room where they
9 hold the board meetings.

10 Q. Do you recall what kind of -- what time of day it was?

11 A. Morning.

12 Q. And what do you -- who else was present at the meeting?

13 A. From our Company it was myself and my manager,
14 Justin Grygiel. From the district it was
15 Dr. Kelley Peatross; Rob Bradley; Phoebe Wood, who was their
16 financial manager/finance manager; and I don't recall if
17 Dr. Jenkins was there or not, he may have been there.

18 Q. Okay. Was there anyone else there?

19 A. Not that I recall.

20 Q. Do you recall if Tonya DeVore was there from the
21 Steelworkers?

22 A. I do not.

23 Q. Okay. Tell us who presented on behalf of First Student
24 at the meeting?

25 A. It was a combination of Justin and myself, both of us.

1 Q. And what was the nature of the presentation?

2 A. It was a overview of what we had presented in our
3 proposal regarding a timeline, a -- they had wanted us to
4 purchase their bus fleet so it was inclusive of that number,
5 and then bus replacements, and also that overview in a little
6 bit more depth that I went into of our Company and where we
7 are in the industry and in the state of Michigan.

8 Q. Do you recall there being any discussion of the
9 Company's recognizing the Steelworkers Union?

10 A. I do.

11 Q. What do you recall about that?

12 A. We were asked if we -- if First Student recognizes
13 organized labor groups or unions.

14 Q. And how did you respond to that?

15 A. That we do recognize unions if we hire 51 percent or
16 more of their current labor force.

17 Q. Do you recall there being any discussion about hiring
18 the then district employees?

19 A. I do.

20 Q. What do you recall about that?

21 A. Our intention was to hire as many of those drivers as
22 possible. We have a good record of high percentages of
23 retaining our other drivers at other locations, over 80, 85,
24 90 percent in a lot of cases; and we spoke to wages for those
25 drivers.

1 Q. Was there any discussion on any conditions for hiring
2 the district employees?

3 A. Yes, there was.

4 Q. What was that discussion?

5 A. We have hiring protocols established at our Company that
6 every employee would have to go through, and it would be a
7 qualification of them meeting all of our hiring criteria,
8 going through the interview process, starting with an
9 application and meeting all of our hiring criteria which
10 would include background check, drug screen, and some other
11 tests.

12 Q. And you addressed that at the meeting?

13 A. Yes.

14 Q. Any other subjects you recall addressing at the meeting?

15 A. We may have -- I believe we discussed what the wages
16 would be for the current drivers and --

17 Q. What do you recall about that discussion?

18 A. I recall them asking what our intent was to pay the
19 district drivers that currently worked for the district.

20 Q. And how did you respond to that?

21 A. We intended to maintain their wages.

22 Q. Did you talk about any prospects for increases?

23 A. We had planned increases for them, but nothing specific.

24 Q. Did you mention that at the meeting?

25 A. Yes.

1 Q. Following that meeting, did the school board make a
2 determination on whether to move -- on who it would select
3 for the transportation provider?

4 A. Yes.

5 Q. And when was that determination made?

6 A. The following month.

7 Q. Okay. Do you recall it being made in October of 2011?

8 MS. REBHORN: I object, Your Honor. That
9 mischaracterizes the witness' testimony.

10 JUDGE CARISSIMI: Overruled.

11 THE WITNESS: Yes.

12 Q. BY MR. KADELA: Okay. And that was -- how did that come
13 about?

14 A. I was notified by Dr. Peatross that we would be the
15 Company they would look to partner with and there was a
16 recommendation meeting that would take place in the near
17 future. She would let me know as to when that date would be.

18 Q. Okay. And do you recall what that date was?

19 A. I don't.

20 Q. Okay. And did the board vote to approve a contract with
21 First Student at that time?

22 A. They did.

23 Q. Okay. Did that contract go forward?

24 A. Yes -- no, not that contract, no.

25 Q. Okay. What happened?

1 A. After the vote -- after the board vote to approve First
2 Student by the administration's recommendation, Dr. Jenkins
3 pulled back on the award and said they were going to hold off
4 for this year -- for that year, I should say.

5 Q. Was the RFP withdrawn at that time?

6 A. Yes.

7 Q. Okay. All right. And were you in subsequent
8 communication with the district over re-bidding?

9 A. I was.

10 Q. When did that happen?

11 A. There was a two or three-month period after I was
12 notified that they were going to pull back the
13 recommendation.

14 Q. Okay. What --

15 A. I stayed in contact with the district following up with
16 them as to how they wanted to move forward, expressing our
17 interest in the partnership.

18 Q. And did that lead to your submitting a new proposal?

19 A. It did.

20 Q. Mr. Kinsley, I want to show you what's been previously
21 introduced as General Counsel's Exhibit 20. Can you tell us
22 what -- flip through the documents, take a look at them,
23 familiarize yourself with them, and then tell us what you
24 have in front of you.

25 A. This is our revised proposal.

1 Q. And you were involved in its preparation?

2 A. I was.

3 Q. Okay. And responsible for submitting it?

4 A. Yes.

5 Q. Okay. Now, this document -- I won't have questions for
6 you because it speaks for itself, but what I would like to do
7 is direct your attention to the third page of it. Do you see
8 at the bottom there's a section captioned "Health Benefits"?

9 A. Yes.

10 Q. And it refers to or it states that, "We have included
11 the cost of that plan coverage for the 17 drivers and
12 monitors currently being covered by the district in each of
13 the pricing proposals." Can you explain that what related
14 to?

15 A. That was our insurance offering to the current workforce
16 by the request of the district, that we offer something
17 similar to what they currently were enrolled in.

18 Q. And who fell within the scope of that request in terms
19 of coverage?

20 A. Those 17 drivers and monitors.

21 Q. Okay. That was limited to those who had elected
22 coverage through the district?

23 A. That's exactly correct, yes.

24 MS. REBHORN: I object. That's a leading question.

25 JUDGE CARISSIMI: Overruled.

1 Q. BY MR. KADELA: How did you arrive at the number of 17?

2 A. That was the current enrollment level of the district
3 employees.

4 Q. That was based on information provided to you by the
5 district?

6 A. That's correct.

7 MS. REBHORN: I object. That's a leading question.

8 JUDGE CARISSIMI: Overruled.

9 Q. BY MR. KADELA: Now, after submitting the proposal, what
10 was the next step in the process?

11 A. We met with the -- we met with Dr. Peatross,
12 Rob Bradley, and Dr. Jenkins to -- or excuse me, no, this
13 was -- that meeting was before this. They made a
14 recommendation to award us a contract.

15 Q. And were steps then taken to prepare a contract?

16 A. Yes.

17 Q. All right. And who was involved in that?

18 A. In establishing the contract?

19 Q. Yes.

20 A. Our legal team and the district's legal team.

21 Q. And ultimately there was an agreement reach?

22 A. Yes.

23 Q. All right. Now, before we get to that -- would -- did
24 that occur in May of 2012?

25 A. Yes.

1 Q. Okay. Prior to that time, was -- were you asked to --
2 was First Student asked to meet with the employees?

3 A. We were.

4 Q. Okay. When was -- who asked you to meet with the
5 employees?

6 A. Dr. Peatross.

7 Q. Okay. Do you recall -- and that meeting went forward?

8 A. Yes, it did.

9 Q. And do call -- recall around when it was?

10 A. The 2nd of March.

11 Q. And where was that meeting held?

12 A. That was held at the break room at the transportation
13 facility on Jenison.

14 Q. Who was in attendance at the meeting?

15 A. For First Student it was myself and Doug Meek; for the
16 district it was Rob Bradley, Dr. Peatross.

17 Q. And the employees?

18 A. Oh, yes, all the drivers and attendants were there.

19 Q. Were you able to estimate how many employees were in the
20 room?

21 A. Forty or fifty, as I recall.

22 Q. How long did the meeting last?

23 A. An hour.

24 Q. How did it begin?

25 A. It began by Dr. Peatross introducing our Company, and

1 from there she introduced myself. I made a brief statement
2 introducing myself, my background a little bit, and then
3 Doug Meek took over and went into a little bit of more depth
4 about what they could expect in the upcoming weeks and days
5 in anticipation of a final contract being executed.

6 Q. Do you recall his addressing with the group the hiring
7 process?

8 A. Yes.

9 Q. What do you recall him saying with respect to that
10 subject?

11 A. He stated that if we were to hire 51 percent or more of
12 the current workforce, that we would recognize the Union and
13 bargain in good faith under new terms and conditions.

14 Q. Did he talk about the steps employees would have to take
15 to become employees?

16 A. Yes.

17 Q. What did he say regarding that?

18 A. He spoke beginning with the interview -- or excuse me,
19 with the application and the instructions on how complete to
20 be with the application, that no spaces were to be left
21 blank. He spoke to the interview process. He spoke to the
22 background checks, the dexterity tests, the drug screens, the
23 training and so forth.

24 Q. Did he talk about hours employees would work?

25 A. He did not.

1 Q. Do you recall him talking about the routing system?

2 A. He did not.

3 Q. Okay. Do you recall his talking about any terms and
4 conditions of employment?

5 A. No.

6 Q. Okay. Do you recall him talking about any subjects that
7 would be subject to negotiation?

8 A. Yes.

9 Q. Okay. What do you recall about that?

10 A. There were several questions that were posed to him from
11 the group of drivers and bus aides regarding paid time off,
12 vacation time, sick pay and so on, and a few others, that his
13 response was those -- all those items would be subject to
14 negotiation.

15 Q. Do you recall Dr. Peatross saying anything at that
16 meeting?

17 A. I do.

18 Q. What do you recall her saying?

19 A. She was asked about the -- one of the bus aides stood up
20 and asked about them, and she stated that if they were to
21 establish a contract with First Student, that the current
22 contract they had with Saginaw Public Schools would be null
23 and void.

24 Q. Do you recall her saying anything else?

25 MS. REBHORN: Objection. Hearsay.

1 JUDGE CARISSIMI: It's not hearsay; she testified.

2 THE WITNESS: I do not --

3 Q. BY MR. KADELA: The contract -- the terms of the
4 contract was ironed out in May?

5 A. Yes.

6 Q. Okay. And after that was done, what was the next step
7 in the process of moving forward with actually contracting
8 with First Student?

9 A. We had a driver meeting, yes.

10 Q. Well, prior to that was there a board meeting?

11 A. Oh, yes, I'm sorry. Yes, there was a board meeting for
12 the board to approve the contract after it had been
13 established and agreed upon by both First Student and the
14 district.

15 Q. And when was that meeting?

16 A. I don't recall the specific date. March -- May 16th.

17 Q. Okay. How did you learn of that meeting?

18 A. I was contacted by Dr. Peatross.

19 Q. And do -- over the telephone?

20 A. Yes.

21 Q. Sometime before the meeting?

22 A. Yes.

23 Q. Do -- what do you recall about that conversation?

24 A. She had mentioned that they anticipated having the board
25 vote on the contract on the evening of the 16th at a board

1 meeting.

2 Q. And did she invite you to attend?

3 A. Yes.

4 Q. All right. Was there anything else to the invitation
5 other than to attend?

6 MS. BRAZEAL: Your Honor, this is -- I object. This is
7 hearsay. Peatross did not testify regarding these issues.

8 JUDGE CARISSIMI: Overruled.

9 Q. BY MR. KADELA: Anything other than come to the meeting?

10 A. No.

11 Q. Okay. When you went to the -- did -- so when you went
12 to the meeting that night, did you have any plan on speaking?

13 A. No.

14 Q. Okay. Did you end up speaking?

15 A. I did.

16 Q. How did that come about?

17 A. One of the board members asked Dr. Jenkins, the
18 superintendent, a question, and Dr. Jenkins looked to me to
19 respond. He asked me to step to the podium, which I did.

20 Q. And how long were you at the podium for?

21 A. I was there maybe 15, 20 minutes.

22 Q. Were you talking that whole time?

23 A. No.

24 Q. What was going on while you were at the podium?

25 A. There was dialogue going back and forth between the

1 board members and Dr. Peatross, and the board members and
2 Dr. Jenkins.

3 Q. All right. So when you went to the podium, do you
4 recall what -- you were asked a question?

5 A. Yes, there was a question regarding the Union
6 recognition.

7 Q. Regarding what?

8 A. Union recognition, whether we would recognize their
9 union.

10 Q. Okay. And do you recall who asked that question? Did
11 you know the board members by name?

12 A. I did know the board members by name; I don't recall who
13 asked the question.

14 Q. And how did you respond?

15 A. I responded that yes, we would recognize the Union if we
16 hired 51 percent or more of the workforce.

17 Q. Were you asked any other questions?

18 A. No.

19 Q. Were you asked any questions about the hiring process?

20 A. That was part of the dialogue. I don't know that it was
21 in a specific question, but it was part of that dialogue.

22 Q. The back and forth between the board members --

23 A. Right. Exactly.

24 Q. And were you involved in some of that dialogue then?

25 A. Not between Dr. Jenkins -- I mean he looked to me for

1 acknowledgement, and I would give him acknowledgement and
2 maybe go into a little bit of a description about the Union
3 recognition and the hiring process.

4 Q. What do you recall saying about the hiring process?

5 A. That we have all of the hiring formal protocols that we
6 follow from the interview or excuse me, from the application
7 to the interview to the dexterity tests to the background
8 checks to the drug screens and so on that every employee
9 would need to go through that process.

10 Q. Do you recall there being any discussion or questions
11 regarding the wages that First Student would pay the current
12 employees?

13 A. Yes, that was part of the same discussion.

14 Q. What do you recall about that?

15 A. They had asked what our intent was for the wages for the
16 drivers that currently worked for the district.

17 JUDGE CARISSIMI: Sir, when you referred to "they," who
18 do you mean?

19 THE WITNESS: They being the board and the
20 administration.

21 JUDGE CARISSIMI: All right. Thank you.

22 Q. BY MR. KADELA: And, again, do you recall any
23 specific -- by identity board members or just someone from
24 the board asking the question?

25 A. Someone from the board; not specific, I don't recall.

1 Q. Do you recall anything else about your time at the
2 podium?

3 A. No.

4 Q. And how did your time at the podium end?

5 A. Dr. Peatross looked at me and said, "You can sit down."

6 Q. How late did the meeting go till? I guess I should ask
7 what time did it start?

8 A. I believe it started at 7 o'clock.

9 Q. And how late did it go?

10 A. Probably 8:30 or 9:00.

11 Q. Okay. Were there other items on the agenda?

12 A. No.

13 Q. Well, I mean in terms for your -- outside of your
14 interest, did the board have other items that it was talking
15 about that evening?

16 A. They may have; I don't recall.

17 Q. What'd you do when the meeting ended?

18 A. I gathered up my things and was -- walked out to my car.

19 Q. Was anybody walking with you?

20 A. Rob Bradley was walking out with me.

21 Q. Okay. Did you come across anybody as you were walking
22 out?

23 A. Yes.

24 Q. Who'd you come across?

25 A. I was approached by Tonya DeVore.

1 Q. Was there anybody else around her?

2 A. There were a few drivers as I recall.

3 Q. Okay. What happened?

4 A. Tonya corrected my statement of 51 percent or more, of
5 our hiring 51 percent or more; we would recognize the Union
6 by saying that it should be 50 percent plus one.

7 Q. Did she say anything else in mentioning that?

8 A. No.

9 Q. And how did you respond, if at all?

10 A. I acknowledged her statement and said she was correct.

11 Q. Any -- did you have any further discussion with her?

12 A. There was a little beyond that.

13 Q. What do you recall?

14 A. It was more involving some of the other drivers that
15 were sitting there; they were concerned about their
16 employment with our Company.

17 Q. What do you recall about that discussion?

18 A. I said if they all meet our hiring criteria, background
19 checks, and so forth, our wages -- their wages would be
20 maintained, that they shouldn't have anything to worry about
21 coming to work for our Company.

22 Q. Do you recall anything else?

23 A. No.

24 Q. Okay.

25 **(Pause.)**

1 Q. BY MR. KADELA: Did you say at any time during the board
2 meeting, while you were at the podium, that when First
3 Student took over, everything would remain the same?

4 A. No.

5 Q. Did you say that after the meeting when you were with
6 Ms. DeVore and the group of drivers?

7 A. I did not.

8 **(Pause.)**

9 Q. BY MR. KADELA: Mr. Kinsley, I want to show you next
10 what's been admitted into evidence as General Counsel's
11 Exhibits 11(a) and (b), a letter to you from Ms. DeVore with
12 an attachment. Do you recognize those?

13 A. Yes.

14 Q. Do you recall receiving those?

15 A. I do.

16 Q. Upon receiving those, what did you do?

17 A. I reached out to our legal department and contacted
18 Doug Meek.

19 Q. Okay. And did you ever respond to that letter?

20 A. I did not.

21 Q. Why not?

22 A. Union negotiation is not my responsibility and we hadn't
23 hired anybody.

24 Q. Do you recall speaking to Ms. DeVore about that letter
25 after receiving it?

1 A. I don't.

2 Q. Do you recall ever putting her in touch with Mr. Meek?

3 A. I do.

4 Q. Okay. What do you recall about that?

5 A. When I spoke to her about Mr. Meek, I don't recall if it
6 was before receiving this letter or not, but when I -- when
7 she spoke to me about beginning dialogue, about establishing
8 negotiations, I put her in touch with Doug.

9 **(Respondent's Exhibit 8 marked for identification.)**

10 Q. BY MR. KADELA: Mr. Kinsley, I've handed you what we've
11 marked for identification as Respondent's Exhibit Number 8.
12 Can you identify that?

13 A. Yes, this is an e-mail I received.

14 Q. And do you -- and are these the attachments that were --

15 A. Yes.

16 Q. -- appended to it?

17 A. Yes.

18 Q. And what did you -- what did -- what, if anything, did
19 you do after receiving this e-mail?

20 A. I did nothing. It was addressed to Dr. Jenkins, the
21 superintendent of the school district.

22 Q. Well, I'm referring to the e-mail.

23 A. Oh, I'm sorry.

24 Q. What, if anything, did you do?

25 A. I didn't do anything. I -- oh, I forwarded -- I'm

1 sorry. I forwarded this to both Doug and to our legal
2 department.

3 Q. Well, you see it's addressed to Doug. Do you recall
4 doing that or --

5 A. I still probably didn't see his cc on the e-mail and
6 forwarded it to him.

7 Q. Okay. Very good.

8 MR. KADELA: Your Honor, I'd offer Respondent's
9 Exhibit 8

10 JUDGE CARISSIMI: Any objection to Respondent's
11 Exhibit 8?

12 MS. BRAZEAL: No objection.

13 MS. REBHORN: No objection, Your Honor.

14 JUDGE CARISSIMI: Respondent's Exhibit 8 is admitted.

15 **(Respondent's Exhibit 8 received in evidence.)**

16 MR. KADELA: Those are all the questions I have, Your
17 Honor.

18 JUDGE CARISSIMI: Thank you very much.

19 Cross-examination by Counsel for Acting General Counsel?

20 MS. BRAZEAL: Yes, I just need a couple minutes.

21 JUDGE CARISSIMI: How time do you think you'd need?

22 MS. BRAZEAL: About five -- less than five minutes.

23 JUDGE CARISSIMI: All right.

24 MS. BRAZEAL: Five minutes. I'll say five minutes.

25 JUDGE CARISSIMI: That's fine.

1 MS. BRAZEAL: Okay.

2 JUDGE CARISSIMI: So we'll be off the record for five
3 minutes or thereabouts. You can tell me when we're ready.
4 (Off the record.)

5 JUDGE CARISSIMI: Let's go on the record.

6 Counsel for the Acting General Counsel, you may cross-
7 examine.

8 MS. BRAZEAL: Okay.

9 CROSS-EXAMINATION

10 Q. BY MS. BRAZEAL: Good morning. My name is
11 Jennifer Brazeal. I'm Counsel with the General Counsel.

12 Mr. Kinsley, what is your job position with First
13 Student?

14 A. I'm a business development manager for the state of
15 Michigan.

16 Q. Okay. Is part of your duties to sell First Student
17 services to school districts?

18 A. It is.

19 Q. Okay. And are you paid on commission?

20 A. A portion.

21 Q. And how much is that commission?

22 A. It's a portion of what the total contract is.

23 Q. What portion is it?

24 A. Less than 1 percent.

25 Q. The contract that First Student entered into with

1 Saginaw School District, do you know how much that contract
2 was for?

3 MR. KADELA: Objection.

4 JUDGE CARISSIMI: Basis?

5 MR. KADELA: It's not relevant.

6 JUDGE CARISSIMI: It's early in the examination. It may
7 be. I'll let counsel ask the question and get an answer to
8 it.

9 Q. BY MS. BRAZEAL: Okay.

10 A. Approximately 9 million as I recall.

11 Q. Nine million. So you would receive 1 percent of the
12 contract price if First Student were to enter into a contract
13 with Saginaw School District?

14 A. No, I said my commission was less 1 percent.

15 Q. Will be less than 1 percent?

16 A. That's correct.

17 Q. Okay. And what is it?

18 JUDGE CARISSIMI: It's less than 1 percent.

19 Q. BY MS. BRAZEAL: Less than 1 percent?

20 JUDGE CARISSIMI: I don't want the witness to have to do
21 the math.

22 MS. BRAZEAL: All right.

23 JUDGE CARISSIMI: We can do the math at a later time.

24 MS. BRAZEAL: All right.

25 Q. BY MS. BRAZEAL: When did you become involved with the

1 Saginaw Public School District with respect to providing
2 services? Let me rephrase that question.

3 When did you become aware that Saginaw School District
4 was looking at First Student to provide the bus services?

5 A. Do you mean when they submitted their RFP originally in
6 2011?

7 Q. Yes.

8 A. 2011.

9 Q. Okay. And were you working closely with Dr. Peatross?

10 A. I was not.

11 Q. You were not. Who were you working with at the school
12 district?

13 A. Dan Lapan was the contact at the time.

14 Q. Okay. Did you ever come -- it's true that you became to
15 work -- you later became to work closely with Dr. Peatross;
16 is that correct?

17 A. Yes, later, certainly.

18 Q. All right. You were aware that the school district was
19 interested in maintaining the wages and benefits of the
20 current employees when those employees were made to be First
21 Student employees; is that correct?

22 A. Yes.

23 Q. Okay. So you said that you -- I want to go to the late
24 July meeting, late July 2011 meeting that you testified to.
25 Do you remember that meeting?

1 MS. BRAZEAL: -- I didn't ask him if he ever saw it. I
2 just asked him to read through it and to basically testify as
3 to whether that chart describes what he told the Saginaw
4 Public School District.

5 JUDGE CARISSIMI: And I'm going to overrule the
6 objection.

7 THE WITNESS: No.

8 Q. BY MS. BRAZEAL: Okay. In which way is it different?

9 A. The union recognition is incomplete.

10 Q. Okay. Any other differences?

11 A. The seniority section is incomplete. The benefit
12 section is incomplete.

13 Q. Okay. Now, you said that the union section is
14 incomplete. Isn't it true that you told Saginaw School
15 District that First Student would recognize the Union; is
16 that correct?

17 A. I stated to the district that we would recognize the
18 Union if we hired 51 percent or more of their workers.

19 Q. And didn't you also say that First Student usually hires
20 between 80, 90 percent of workers?

21 A. I gave them examples of other contracts that we had, and
22 that was an example I gave.

23 Q. Was it -- isn't it true that it was First Student's
24 intention to hire the majority of workers if the employees
25 met the hiring protocols?

1 A. That was our intention and that was our goal, yes.

2 Q. Okay. And do you know how many employees First Student
3 hired once they took over the Saginaw School District's bus
4 services?

5 A. I don't know exactly.

6 Q. Do you know if it was a majority?

7 A. It -- as I recall, it was a majority.

8 Q. Okay. And so that was consistent with First Student's
9 practices?

10 A. Yes. The hiring of more than --

11 Q. Fifty percent --

12 A. -- 51 percent of their workforce would be consistent
13 with our goal and our other locations.

14 Q. Okay.

15 A. Most of our other locations.

16 Q. Now, I want to talk about the March 2nd meeting, and who
17 was present at this meeting?

18 A. Every person that was there or --

19 Q. Well, no, let me just ask --

20 A. -- do you want to know whether --

21 Q. -- on behalf of First Student --

22 A. Okay.

23 Q. -- on behalf of First Student who was present.

24 A. Thank you. It was myself and Doug Meek.

25 Q. Okay. Was Dr. Peatross, was she present?

1 were more of a formality?

2 A. No, that's not true.

3 Q. Okay. Moving forward to the May 16th board meeting with
4 the Saginaw Public School District, you remember that?

5 A. I do.

6 Q. Okay. And members of the school board were present; is
7 that correct?

8 A. Correct.

9 Q. Dr. Peatross present?

10 A. Yes.

11 Q. Okay. And it's true that the school board meetings are
12 public meetings, right?

13 A. That's correct.

14 Q. Okay. And what was the purpose of your attendance at
15 that meeting?

16 A. I was notified by Dr. Peatross that they intended to
17 make a recommendation to -- or excuse me, for the board to
18 award to First Student and to approve the contract that was
19 in front of them.

20 Q. So you wanted to come to that meeting to make sure that
21 the deal was closed; is that correct?

22 A. I went to that meeting as -- at a request by
23 Dr. Peatross.

24 Q. Okay. Was it important for you that the school board
25 adopted the recommendation that First Student become the

1 provider of bus services?

2 A. Certainly.

3 Q. Okay. That was part of your job, right?

4 A. That's correct.

5 Q. Okay. Do you --

6 A. Excuse me. Going back to your last question, what was
7 part of my job?

8 Q. Well, part of your job was to sell bus services to the
9 Saginaw Public School District -- well, to sell bus services
10 to public school districts, right?

11 A. I'm a business development manager for the state of
12 Michigan --

13 Q. Um-hmm.

14 A. -- for First Student, Incorporated.

15 Q. Okay. Did you go to the school board meeting on
16 May 16th as part of your job?

17 A. Yes.

18 Q. Okay. And you knew that when you -- that certain things
19 were important for the school district in order for them to
20 approve the terms of the contract with First Student?

21 MR. KADELA: Objection.

22 JUDGE CARISSIMI: Basis?

23 MR. KADELA: I don't -- it's a non-specific question
24 that asks what was in the mind of particular board members.
25 I mean certainly there's no dispute that the board had -- or

1 the district had made known certain of the parameters that it
2 wanted the successful provider or bidder to meet, but --

3 JUDGE CARISSIMI: Let me hear your question again.

4 MS. BRAZEAL: My question -- I can't remember the exact
5 phrasing, but you knew -- Mr. Kinsley knew that certain
6 things were important to the school board members in order
7 for the school board to approve the contract with First
8 Student?

9 JUDGE CARISSIMI: All right. I'll permit that question.
10 You can answer.

11 THE WITNESS: I spoke to no school board member about
12 anything specific to what they wanted in the contract.

13 Q. BY MS. BRAZEAL: Okay. Did you know that the school
14 district was interested in maintaining wages for employees?

15 A. Yes.

16 Q. And during this May 16th meeting, you said that wages
17 would remain the same; is that correct?

18 A. We intended to maintain their wages. For the current
19 workforce --

20 Q. Um-hmm.

21 A. -- we intended to maintain their current wages.

22 Q. Okay. And at that time you intended to hire a majority
23 of employees if they passed the hiring protocols?

24 A. That's correct.

25 Q. Okay. And have you ever used the words -- well, in this

1 meeting, did you use the words "smooth transition"?

2 A. Yes.

3 Q. Okay. And what was your intent in using those words?

4 MR. KADELA: Objection.

5 JUDGE CARISSIMI: Sustained.

6 Q. BY MS. BRAZEAL: Okay. Did you state that the
7 transition from the Saginaw Public School District to First
8 Student would be a smooth transition?

9 A. No.

10 Q. Well, how did you use the words "smooth transition"?

11 A. Our intent was to have a smooth transition of privatized
12 transportation services.

13 Q. Okay. Now, in this May 16th meeting, you didn't tell
14 the attendees that there will be a two-tier wage rate for
15 First Student employees, did you?

16 A. No.

17 Q. You didn't. Okay. You didn't tell them that any terms
18 and conditions of employment would change once they became
19 First Student employees, did you?

20 A. That wasn't a question I was asked.

21 Q. So you didn't say that?

22 A. I did not say that.

23 Q. Okay. Back on March 2nd meeting with Dr. Peatross and
24 employees at the garage, do you recall that?

25 A. I do.

1 Robert Bradley was with you?

2 A. Um-hmm.

3 Q. Right? Okay.

4 A. That's correct.

5 Q. And you ended up speaking to a group of employees; is
6 that right? About four or five employees.

7 A. And Tonya DeVore.

8 Q. And Tonya DeVore, right. So isn't it true that you told
9 Ms. DeVore that First Student intended to recognize the
10 Union?

11 A. Yes.

12 Q. Okay.

13 A. We intended to recognize the Union if we hired 51
14 percent or more of the current workforce; that's what I said.

15 Q. And did you also say that you intended to hire everyone?

16 A. I didn't say intend. No --

17 Q. Did you say you --

18 A. So no, I didn't say that.

19 Q. Did you say that we would hire everyone if they met the
20 hiring protocols?

21 A. No, I didn't say that.

22 Q. What did you mention with respect to hiring?

23 A. Our goal is to hire as many people as we can that meet
24 all of our hiring protocol.

25 Q. Okay.

1 A. And criteria.

2 Q. Okay. Isn't it true that you told the employees
3 everything would be okay?

4 A. No, I didn't say that.

5 Q. Okay. Did you tell them -- did you tell the employees
6 and Ms. DeVore that First Student was union friendly?

7 A. Yes.

8 Q. Okay. And that First Student had a contract with
9 Teamsters?

10 A. That's correct.

11 Q. Isn't it true that you told them that -- you suggested
12 that they go to Teamsters?

13 A. I did not.

14 Q. Okay. Okay. Did you attend a meeting with the First
15 Student -- with the drivers the next day on May 17th?

16 A. I did.

17 MR. KADELA: Objection, Your Honor.

18 JUDGE CARISSIMI: Basis?

19 MR. KADELA: It's outside the scope of direct.

20 JUDGE CARISSIMI: That is correct. So I'm going to
21 sustain.

22 MS. REBHORN: Your Honor, this witness is here
23 testifying about his whole course of conduct --

24 JUDGE CARISSIMI: Counsel chose not to examine him about
25 that so if -- I'm going to -- he was -- if there's no direct

1 Q. This deal with Saginaw -- if you closed this deal, you'd
2 have done your job? That's right?

3 A. No, not in its entirety.

4 Q. This wasn't doing your job?

5 A. It was part of doing my job.

6 Q. Closing the deal with Saginaw was your job?

7 A. It was part of my job.

8 Q. Yes or no?

9 A. No.

10 Q. No, this isn't your job?

11 MR. KADELA: Excuse me. I'll object, Your Honor. This
12 is argumentative.

13 JUDGE CARISSIMI: Sustained.

14 Q. BY MS. REBHORN: The May 16th board meeting, you didn't
15 expect to make any presentation?

16 A. No.

17 Q. You did know the vote would be happening?

18 A. I knew there was a vote on the contract, yes.

19 Q. Is it -- yes. And you'd been acting as First Student's
20 representative for this deal?

21 A. Yes.

22 Q. You accepted Dr. Peatross' invitation?

23 A. I did.

24 Q. Do you have any relationship with the school district
25 outside of your role with First Student?

1 A. No.

2 Q. And there were questions at this meeting that you
3 answered?

4 A. Yes.

5 Q. You answered them on behalf of First Student?

6 A. Yes.

7 Q. This was a public meeting?

8 A. Yes.

9 Q. And Ms. DeVore was there?

10 A. Yes.

11 Q. And the drivers and monitors were there?

12 A. There were some.

13 Q. And you urged the board to vote on the contract that
14 night?

15 A. No.

16 Q. You didn't say that that night was important so that the
17 transition could be smooth?

18 A. I may have said something about us needing 90 days to
19 ensure a smooth transition, but I don't recall urging the
20 board to do anything.

21 Q. In order to take over -- from May 16th to July 1st, that
22 was already less than 90 days?

23 A. (No verbal response.)

24 Q. So did you -- oh, was that a yes, Mr. Kinsley? I'm
25 sorry.

1 Q. Is that Area Manager Doug Meek?

2 A. Yes.

3 Q. Was that meeting held on May 17?

4 A. Yes, sir, it was.

5 Q. And where was that meeting held?

6 A. That was held in the transportation offices of Saginaw.

7 Q. And how long of a meeting was it?

8 A. I don't know; the total length of probably two, three
9 hours.

10 Q. And who was -- who attended?

11 A. From First Student?

12 Q. Yes.

13 A. There were a variety of people. Doug Meek was there. I
14 was there. A lady by the name of Char Campbell, who was a
15 new region human resources manager out of Chicago that was
16 observing for the first time a startup meeting. I think
17 Dan Kinsley was there. John Kiraly, the new location
18 manager, was there.

19 Q. And how did the meeting start?

20 A. I believe there were a couple of introductions by
21 Dr. Peatross and by Rob Bradley from the Saginaw Public
22 Schools, and then Doug Meek did a 10 or 15 minute
23 presentation, introductions, kind of summary of First -- what
24 we're about at First Student and so forth.

25 Q. What happened after that?

1 A. Then he turned it over to me to do the presentation on
2 the employee information and question and answer sheet.

3 Q. Okay. Mr. Kellerman, I'm going to show you what's been
4 previously introduced as General Counsel's Exhibit Number 5.
5 Can you tell us what that is?

6 A. Yes, this is the Frequently Asked Questions document
7 that we passed out to the drivers and monitors who attended
8 the meeting on the 17th.

9 Q. And how was that utilized during the course of the
10 meeting?

11 A. I used this document kind of a sheet that -- to answer
12 questions and explain things that we -- prep sheet --

13 Q. Did you go through it item by item?

14 A. Not completely. I picked out some of the things that I
15 thought were critical for them to know and emphasize and some
16 things they could read themselves.

17 Q. Do you recall what you emphasized?

18 A. Well, we were particularly interested in letting them
19 know about the hiring process and how the seniority was going
20 to work and those types of things.

21 Q. Okay. Were there any questions over the course of the
22 meeting?

23 A. Yes, we had some questions. I don't remember all of
24 them, but some of them I do.

25 Q. Do you recall any questions about recognizing the Union?

1 A. Yes, there was a question came up about the Union --

2 Q. Okay.

3 A. -- during the discussions.

4 Q. Who fielded that question?

5 A. I did.

6 Q. Okay. Do you recall how you answered that?

7 A. Yeah, I told them a little bit about First Student's and
8 First Group America's freedom of association policy. We have
9 a neutrality policy towards unions with our Company, and
10 explained to them that we had an open-door policy and that we
11 got along well with both union and non-union situations, and
12 if they had the existing union and we hired 50 percent plus
13 one of the bargaining unit, then they could request -- that
14 that union could request voluntary recognition by our
15 Company, which would be handled by our attorneys.

16 Q. Okay. Do you recall any -- well, let's look at page 1
17 of Exhibit Number 5.

18 A. Okay.

19 Q. It talks about the hiring process.

20 A. Right.

21 Q. And it lists various requirements that have to be
22 satisfied to receive a formal job offer. Did you review
23 those items with the employees?

24 A. Yes.

25 Q. Okay. The -- at the beginning of the note, it talks

1 about -- I'm sorry, on the second page it talks about current
2 employees having to apply by May 23. Did you cover that with
3 them?

4 A. Yes, we emphasized that several times during the
5 discussions because it was important for us to get the
6 applications turned in timely, and we wanted anybody that had
7 an opportunity and wanted to apply for a job with First
8 Student to get their applications in so we could begin the
9 process.

10 MR. KADELA: Your Honor, I'm going to mark a couple of
11 exhibits. It will take me -- should be less than a minute.

12 JUDGE CARISSIMI: All right. Let's go off the record.
13 (Off the record.)

14 (Respondent's Exhibits 9 and 10 marked for identification.)

15 JUDGE CARISSIMI: On the record.

16 You may proceed, counsel.

17 MR. KADELA: Thank you.

18 Q. BY MR. KADELA: Turning again to GC Exhibit Number 5,
19 Mr. Kellerman, the second page at the top talks about
20 providing current employees with a packet containing pre-
21 employment forms to be returned and completed by 12:00 noon
22 on Wednesday, May 23. Was that packet provided at the
23 meeting on May 17th?

24 A. Yes, it was.

25 Q. You've been handed what's been marked for identification

1 at this point Respondent's Exhibit Number 9. Do you see
2 that?

3 A. Yes.

4 Q. Was that one of the documents that was included in the
5 packet?

6 A. Yes, it was.

7 Q. Okay. And can you tell us what this is?

8 A. We always pass that out with the application. Part of
9 our discussions with the employees during the question and
10 answer meeting is to emphasize to them the importance of
11 reporting all their criminal records because it's something
12 that we do and take very seriously, and so we have that and
13 we emphasize that, and then we run background checks, and if
14 they don't report everything on their application, even if it
15 would have been something that might have been a minor thing,
16 it's treated as a falsification of their application.

17 Q. And what's the consequence of that?

18 A. They don't get hired. And it talks about -- Exhibit 9
19 talks about the general requirements for drug testing,
20 performance, dexterity testing, general requirements, and so
21 forth.

22 Q. Okay. If you would turn --

23 MR. KADELA: Your Honor, I'd move for the admission of
24 Respondent's Exhibit 9.

25 JUDGE CARISSIMI: Any objection to Respondent's 9?

1 MS. BRAZEAL: No, Your Honor.

2 MS. REBHORN: No, Your Honor.

3 JUDGE CARISSIMI: Respondent's 9 is admitted.

4 **(Respondent's Exhibit 9 received in evidence.)**

5 Q. BY MR. KADELA: If you would turn now to Respondent's
6 Exhibit Number 10, Mr. Kellerman. Can you identify what this
7 is?

8 A. Yes, that's the employment application for our drivers
9 and monitors.

10 Q. And was this included in the packet provided to the
11 employees on May 17?

12 A. Yes.

13 Q. And did you actually review this with them or just
14 provide it to them?

15 A. Just provided it to them.

16 Q. Was there any discussion about completing it?

17 A. We did discuss -- it was important for them to fill out
18 all of the blanks, all the sections, and if there was a
19 section that was not applicable, to mark "not applicable" or
20 "n/a." And, again, we discussed the criminal reporting, so
21 the criminal records section.

22 Q. And we're talking about some of the sections you went
23 over; did you go over the section on pay rates?

24 MS. REBHORN: Your Honor, I object. The witness did not
25 testify that he went over any of the document.

1 MR. KADELA: Mm?

2 JUDGE CARISSIMI: Overruled.

3 Q. BY MR. KADELA: Did you go over the section on Pay
4 Rates?

5 A. Are you talking about in the question and answer
6 document?

7 Q. Yes, I'm sorry. Back to GC Exhibit 5.

8 A. Yes, in the question and answer document, we did discuss
9 pay rates.

10 Q. Okay. And do you recall there being any questions
11 regarding that?

12 A. The only question was about the B rate that I remember.
13 We'd told them that their standard rates, their driving rates
14 and so forth would stay the same, and that we did have a B
15 rate, hourly rate for non-driving type of work.

16 Q. Do you recall discussing what the B rate was?

17 A. I don't remember if we told them the exact rate at that
18 time or if we told them later on, but we did discuss it and
19 explain what it was, but I don't remember if we gave a
20 specific number at that point or not.

21 Q. Then there's a section in that area on "Do I have a pay
22 guarantee?" Did you review that with them?

23 A. Yes, we did.

24 Q. Were there any questions regarding that?

25 A. No.

1 Q. The next section is Seniority. Did you discuss that
2 with them?

3 A. Yes.

4 Q. Okay. And did you discuss the consequence of not
5 turning in an application by May 23?

6 A. Yes, we did.

7 Q. And do you recall any questions regarding that topic?

8 A. I don't think there were any questions at the meeting --
9 some questions afterwards, but --

10 Q. Next it talks about bidding routes. Did you talk about
11 that?

12 A. Yes.

13 Q. What do you remember about that?

14 A. There was some questions as far as the bidding because I
15 believe that at the location they had done it differently in
16 the past, and we had mentioned to them that we go by
17 seniority and use seniority as our basis both through our
18 union and non-union locations. And they did bidding a little
19 different as far as timing of the year. They do it -- we do
20 it before school starts.

21 Q. The next area was Training. Do you recall going over
22 that?

23 A. Yes.

24 Q. What do you remember about that?

25 A. We just explained to them what would be required for

1 people who were existing drivers and monitors with the
2 Saginaw Public Schools versus people who were coming in with
3 no experience or training and that they needed to complete
4 all their training along with their other requirements in
5 order to be considered for hire with the Company.

6 Q. Were there any questions about that?

7 A. No.

8 Q. Then next area talked about pay for training. Do you
9 recall there being any discussion about that?

10 A. We just explained what it was. There weren't any
11 questions.

12 Q. Okay.

13 A. We did discuss it.

14 Q. The next area is Benefits. Did you review that with
15 them?

16 A. Yeah, we tried to explain to them that our benefit
17 program was based on part-time employees, that we considered
18 our drivers and monitors as part-time employees, not full-
19 time, and so, you know, the benefits would be different.
20 They would be tailored toward a benefit in a part-time
21 employee rather than a full-time employee.

22 Q. Do you recall any questions about that or discussion
23 from the --

24 A. I don't remember anything specifically at the question
25 and answer meeting. There might have been some. I don't

1 remember.

2 Q. Outside of the document, do you recall there being any
3 questions about other terms and conditions of employment?

4 A. No. We emphasized the importance of getting their
5 applications in on time and that they had to complete the
6 entire process, they had to complete their physicals, their
7 drug screens, their background checks, their training, and
8 their dexterity tests, and so forth before they would be
9 hired by the Company.

10 Q. Was there any mention of the Company's employee
11 handbook?

12 A. I don't remember if we specifically talked about it. We
13 may have mentioned that we would be passing out the handbooks
14 during training, but we didn't go through the handbook
15 specifically.

16 Q. Okay. Did you recall indicating that there was a
17 handbook?

18 A. Yes. Yes.

19 Q. Okay. Do you recall anything else about that meeting?

20 A. No, it was a good meeting. The employees asked good
21 questions. They were cordial. I thought it went well.

22 Q. So the district employees received their hiring packets.
23 Then what was the next -- tell us about the next steps in the
24 hiring process from that point?

25 A. Well, they had --

1 JUDGE CARISSIMI: Are we talking --

2 Q. BY MR. KADELA: Is there a kickoff meeting?

3 JUDGE CARISSIMI: -- are we talking about Saginaw?

4 That's what I want to know.

5 Q. BY MR. KADELA: Yeah, you're talking about Saginaw?

6 A. Yeah, most of the employees get their first paycheck in
7 September.

8 Q. Okay. And when do they typically start or --

9 MS. REBHORN: Your Honor, again I object. I don't
10 think --

11 JUDGE CARISSIMI: Yeah.

12 MS. REBHORN: -- this is about Saginaw, which is the
13 only thing that's relevant.

14 JUDGE CARISSIMI: Yeah, I can't tell from that
15 question --

16 Q. BY MR. KADELA: No. In Saginaw when would --

17 JUDGE CARISSIMI: Yeah.

18 Q. BY MR. KADELA: -- when would most of the employees have
19 actually started work?

20 A. Most of the employees start when we have our -- what we
21 call our kickoff meeting in August, which is the meeting to,
22 you know, introduce everybody, explain what we're going to be
23 doing, and so forth; and then they start driving or
24 monitoring after Labor Day in Michigan so.

25 Q. And that's their first day on the payroll?

1 Q. Okay. So you expected those employees to be your
2 employees -- or you considered those individuals to now be
3 your employees at that time?

4 A. No, we didn't consider them to be our employees. We
5 considered them to be potential applicants for our jobs.

6 Q. Okay. Do you know if First Student hired a majority of
7 employees, a majority of Saginaw School District's employees?

8 A. Do I know if we did?

9 Q. Yes, if you did.

10 A. I -- yes, I believe we hired over 50 percent or more,
11 yes.

12 Q. Okay. Would that number be closer to 80 to 90 percent
13 of the employees of Saginaw School District?

14 A. I honestly don't know what the total ended up being
15 compared to the -- what the actual bargaining unit was.

16 Q. Now, background checks and drug tests, those are
17 standard tests that individuals who are operating buses have
18 to undergo in the industry; is that your understanding?

19 A. Well, the drug tests and so forth are Department of
20 Transportation formats.

21 Q. Okay.

22 A. The background checks, I don't know how Saginaw Public
23 Schools did it, but we do find that there's a number of
24 people who are working for school districts --

25 Q. Um-hmm.

1 JUDGE CARISSIMI: You answered. You said it wasn't
2 bargaining.

3 THE WITNESS: Okay.

4 Q. BY MS. REBHORN: At the May 17th meeting, Mr. Kellerman,
5 you said, "Welcome to First Student"; is that right?

6 A. I don't know what I said.

7 Q. You may have said it?

8 A. I may have said it. I don't know.

9 Q. And rather than being cordial at this meeting, the
10 bargaining unit was actually very dissatisfied about what
11 they were learning at this meeting; isn't that right?

12 MR. KADELA: Objection.

13 JUDGE CARISSIMI: Sustained.

14 MS. REBHORN: Your Honor, I'm attempting to impeach the
15 witness.

16 JUDGE CARISSIMI: I don't see how by asking a question
17 about the subjective state of mind of the employees that's
18 going to happen. This witness is not in a position to answer
19 a question about the subjective state of mind of the
20 employees. I sustain the objection.

21 MS. REBHORN: On direct examination, Your Honor, he
22 described the employees as being cordial.

23 JUDGE CARISSIMI: I know. I mean if you ask the
24 question in another way, I may permit an answer to it.

25 Q. BY MS. REBHORN: Didn't the employees protest at that

1 A. Well, I guess I was first introduced to or first talked
2 to Tonya in the summer of last year. I believe it was June.
3 She had called me because Area General Manager Doug Meek had
4 given her my office number. She called me in the office.

5 Q. Okay.

6 MR. HULT: Your Honor, may I approach the witness?

7 JUDGE CARISSIMI: You may.

8 Q. BY MR. HULT: I'm going to hand you -- already been
9 marked as General Counsel Exhibit 13. Do you recognize this
10 document?

11 A. I do.

12 Q. Can you describe what this document is?

13 A. As I recall, Tonya sent me this e-mail after we spoke in
14 June of last year, after she had called me, to inquire about
15 First Student's plans to recognize and bargain with the
16 Steelworkers. She had called me because she was asking
17 whether or not the Company had planned to recognize the
18 Steelworkers, and I told her at that time it was my
19 understanding that the Company was still in the process of
20 hiring drivers, reviewing applications, and that at that
21 point in time I didn't know whether or not the Company would
22 be legally obligated to recognize the Union; and that it was
23 my understanding the contract was scheduled to take effect in
24 July, and so I wouldn't know anything concrete until after
25 that date, and so she had asked if it'd be okay if she called

1 me back again and checked in again after July 1st to see
2 where we were in the hiring process, and then I told her that
3 would be fine, and then she asked me if this was a location
4 that I would be, you know, supporting and handling because I
5 think Doug had told her that I was in a senior role, and I
6 said, you know, ideal, I would like to provide support to the
7 Saginaw site because my parents still live here and I would
8 like to, you know, do work and be back in the area if I could
9 to be with my family, but I was pregnant at the time and I
10 was due to have a baby girl in August and that I would be
11 taking maternity leave probably sometime mid to late August,
12 be taking 12 weeks, and I would be, you know, out until
13 probably late November; and so she asked me if we did end up
14 recognizing the Steelworkers and we did end up, you know,
15 bargaining, that if the Company was willing to perhaps adopt
16 some of the provisions of the labor agreement that had been
17 in place between the Saginaw Public Schools and First Student
18 [sic], we were willing to adopt some of the language items,
19 that maybe then bargaining could wait until I returned from
20 my maternity leave in November, and so I told her, well, that
21 was all premature. I didn't know what was going to be
22 happening. Again, I didn't know if we were even going to be
23 legally obligated to recognize the Union, so we just ended
24 the conversation with her planning to call me back sometime
25 after July 1 to see where we were in the hiring process and

1 what was going on with the startup in the Saginaw location.

2 Q. Did you ever speak to Ms. DeVore again after that
3 occasion while you were employed with First Student?

4 A. I don't remember actually talking with Tonya again. I
5 think I remember seeing her number come up on my caller ID,
6 but as far as I knew, we were still continuing with the
7 startup, continuing with the hiring process, and I didn't
8 have anything concrete to tell her, so I don't remember
9 talking with her again before I went out on maternity leave
10 in late August.

11 MR. HULT: That's all I have.

12 JUDGE CARISSIMI: Thank you.

13 Cross-examination by Counsel for the Acting General
14 Counsel?

15 MS. BRAZEAL: Okay.

16 **CROSS-EXAMINATION**

17 Q. BY MS. BRAZEAL: Good afternoon --

18 A. Hi.

19 Q. -- or morning probably still. My name is
20 Jennifer Brazeal. I'm Counsel with the General Counsel with
21 the NLRB.

22 You just -- well, when you saw that Ms. DeVore had
23 called you, you didn't return her phone call?

24 A. No, I don't remember if she even left me a message. I
25 might have just seen the number come up and we didn't talk.

1 Q. So before May 17th, 2012, you had no communication with
2 the Steelworkers Union or with the bus drivers and monitors
3 in Saginaw?

4 A. I did not have any communication with the employees of
5 the Saginaw School System, and I don't remember having any
6 conversations or communications with the Union either.

7 Q. So you have no knowledge of what the -- what First
8 Student officials said to the Union or to the employees
9 before you spoke to Tonya DeVore that first time?

10 A. I wouldn't have been present for any kind of verbal
11 communications --

12 Q. So no personal knowledge?

13 A. I might have seen a handout that was presented to the
14 employees, but I wouldn't have been present for any like in
15 person meetings.

16 Q. And when you went on maternity leave, Mr. Walther took
17 over your work?

18 A. Well, my peer Todd Logan, who was also a Senior Director
19 of Labor Relations and Human Resources, stood in my place and
20 oversaw my area, and so Raymond Walther would have reported
21 to Todd Logan during my maternity leave.

22 Q. So Mr. Logan took your cases?

23 A. Yeah, essentially, I mean he stepped in my role and
24 would have, you know, worked with Raymond and possibly his
25 team to help cover my area.

1 question.

2 MS. BRAZEAL: Okay.

3 Q. BY MS. BRAZEAL: Do I need me to repeat it?

4 A. Please.

5 Q. Okay. On the May -- during the May 17th meeting, did

6 any employee say or do anything in response to First

7 Student's explanation of the B wage rate?

8 A. Yes. Mr. Balls, he was a senior driver, and he stood up

9 and said, "What the F."

10 Q. Did he say, "What the F," or did he say -- what did he

11 say?

12 JUDGE CARISSIMI: You can use the word, Mr. Bryant. It

13 happens all the time in these cases.

14 THE WITNESS: He said, "What the fuck."

15 Q. BY MS. BRAZEAL: Okay. Did any other employee respond?

16 A. After that, a lot of the employees were very upset and

17 there was a lot of commotion.

18 Q. How do you know they were upset?

19 A. Their -- the tone in their voice was not a pleasant

20 tone.

21 Q. Were they complaining?

22 A. Yes.

23 Q. What were their complaints?

24 A. They wanted --

25 MR. KADELA: Objection.

1 JUDGE CARISSIMI: I'll overrule the objection.

2 MR. KADELA: Well, Your Honor, my --

3 JUDGE CARISSIMI: Yeah.

4 MR. KADELA: -- the basis of my objection is the
5 setting. I'm not sure whether we're in the meeting, outside
6 the meeting --

7 JUDGE CARISSIMI: That's a fair point. Perhaps you
8 could clarify your question.

9 MS. BRAZEAL: Okay.

10 Q. BY MS. BRAZEAL: What -- were you referring -- did
11 this -- were these expressions of being upset occurring
12 during the May 17th staff meeting?

13 A. Before those direct -- Mr. Balls stood up during the
14 meeting.

15 Q. Um-hmm.

16 A. And many employees after the meeting were upset, and
17 they discussed what --

18 MR. KADELA: Objection, Your Honor.

19 MS. BRAZEAL: Okay.

20 JUDGE CARISSIMI: Now, during the meeting, did employees
21 indicate anything to the Company representative, objecting to
22 anything the Company representatives had said?

23 THE WITNESS: Yes.

24 JUDGE CARISSIMI: All right. Now at least, I'm only
25 concerned about what happened at that meeting or when the

1 Company representatives were present. All right? And that's
2 the restricted -- we're restricting it to that because that's
3 what came out of Respondent's case.

4 MS. BRAZEAL: Okay.

5 JUDGE CARISSIMI: All right?

6 MS. BRAZEAL: Okay.

7 JUDGE CARISSIMI: So you're -- you can ask questions
8 about the meeting, but not beyond that.

9 MS. BRAZEAL: Okay.

10 Q. BY MS. BRAZEAL: Besides the comment from Mr. Balls, did
11 any other employee say anything protesting the B wage rate?

12 A. Yes, many employees wanted to know why.

13 Q. Okay. Were you one of those employees?

14 A. I didn't verbally say anything.

15 Q. Okay. And what did you think when you heard of the B
16 wage rate?

17 MR. KADELA: Objection.

18 MS. BRAZEAL: Sustained.

19 MS. BRAZEAL: Okay. That's all the questions I have,
20 Your Honor.

21 JUDGE CARISSIMI: Very good.

22 Counsel for Charging Party, do you have any questions of
23 Mr. Bryant?

24 MS. REBHORN: I do, and he's our only rebuttal witness.

25 JUDGE CARISSIMI: All right. Very good.

TAB 4

AGREEMENT

Between the

Saginaw Board of Education

And the

**Saginaw Public Schools
Bus Driver and Bus Assistant Association
Local 8410-01, United Steelworkers**

August 27, 2010

Through

August 31, 2012

Saginaw, Michigan

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AGREEMENT

THIS AGREEMENT made and entered into on August, 2010, by and between the Board of Education of the City of Saginaw (hereinafter referred to as the "Board" or the "Employer") and the United Steelworkers, AFL-CIO-CLC, on behalf of Local 8410-01, (hereinafter referred to as the "Union").

ARTICLE I

Recognition

A. Recognition

The Board recognizes the Union, to the extent required by Act 176 of the Public Acts of 1939, as amended, and Act 336 of the Public Acts of 1947, as amended, as the sole and exclusive collective bargaining representative, for all full-time and regular part-time employees in the unit certified by the Michigan Employment Relations Commission in Case No. R81 B-77 and described below, employed by the Board.

B. Bargaining Unit

The collective bargaining unit shall consist of all regular full-time and regular part-time hourly rated bus drivers and bus assistants employed by the Board of Education of the City of Saginaw; but excluding, substitute and temporary drivers and bus assistants, dispatchers, supervisors, confidential employees, and all other employees.

C. Employee Definition

The term "employee" and "employees" as used herein shall refer to and include only those employees who are employed in the bargaining unit described above and shall exclude all others not specifically included in said bargaining unit. Reference to the male gender shall include the female gender.

D. Exclusive Agent

The Board agrees not to negotiate with any labor organization representing the employees covered by this Agreement for the duration of this Agreement.

ARTICLE II

Board Rights

A. It is expressly agreed that all rights which ordinarily vest in and have been exercised by the Board, except those which are clearly and expressly relinquished herein by the Board, shall continue to vest exclusively in and be exercised exclusively by the Board without prior negotiations with the Union either as to the taking of action under such rights or with respect to the consequence of such action during the term of this Agreement. Such rights shall include, by way of illustration and not by way of limitation, the right to:

1. The sole right to manage the Board efficiently and economically, including the right to decide the services to be performed and the programs to be provided, the quantity and quality of work to be performed, the methods of performing the work, the scheduling of the work, the control of the materials, equipment etc., to be used and the discontinuance of any service, operation, job or method of performance; introduce new equipment processes, change or eliminate existing equipment and processes, and institute technological changes, decide on the nature of material, supplies, equipment, etc. to be bought or used.

2. Determine the number, location, relocation and types of buildings; discontinue temporarily or permanently, in whole or in part, any of the Board's operations; sell or close buildings; move buildings operated by the School District from one location to another.
 3. Determine the size of the work force and increase or decrease its size; to hire, assign, transfer, and lay off employees; to hire part-time employees or hire substitute employees.
 4. Direct the work force, assign work, including job duties and content, determine the number of employees assigned to any location and number of routes and/or stops assigned to any employee; establish, change, combine, or discontinue job duties or classifications; determine composition of the work force in any department or classification.
 5. Discipline and discharge employees for cause; maintain order and efficiency in the District; investigate and improve individual productivity and initiate and carry out cost and general improvement programs.
 6. To establish the education program, curriculum, organization and structure of the District and its programs; to determine routines and schedules.
 7. To determine the qualifications of employees, including physical conditions, and to determine the policies effecting the selection, testing, or training of employees.
- B. The listing of specific management rights in this Agreement is not intended to be, nor shall be restrictive of a waiver of any rights of management not listed and specifically surrendered herein, whether or not such rights have been exercised by the Board in the past.

ARTICLE III

Union Rights

- A. The Union will have the right to use school buildings at reasonable times and hours for meetings with the bargaining unit when an operating staff is on duty, provided this shall not interfere with or interrupt normal school procedures. Such use will be scheduled through the building administrator, provided that said building administrator will be consulted in advance, within a reasonable time, regarding the time and place of all such meetings. All requests for building use will conform to published Board policies. It is understood that the only cost to the Union will be any additional service costs necessitated by such meetings.
- B. The Union shall be allowed to use space on the bulletin board for posting notices restricted to the following:
1. Notices of Union recreational and social affairs.
 2. Notice of Union election, appointments, and results of Union elections pertaining to employees within the unit.
 3. Notices of Union meetings and educational classes.
 4. Other material approved by the Assistant Superintendent for Human Resources/Labor Relations or his/her designee.
- C. Upon request of the Union, the Board agrees to provide access to (in the form in which it is available in the records of the District) information, which is necessary for collective bargaining. Such information shall be provided during reasonable times during normal business hours,

provided it does not interfere with the normal operation of the District.

ARTICLE IV

General Qualifications for Employment and Continued Employment

- A. All employees must be physically able to successfully fulfill the requirements of assignment. An employee, during employment, may be required to take a physical examination by a physician designated by the Board and at Board expense when so requested by the Board, provided the provisions of this sentence shall not be subject to abuse by the Board.
- B. Neatness and cleanliness of all employees will be required on his or her particular assignment.
- C. Employees should be cooperative, conscientious, faithful, and efficient in carrying out his or her assignment and duties. Every employee should be genuinely interested in the welfare of students, teachers, fellow employees, and the School District in general, and should be desirous of, and willing to improve and enlarge his/her knowledge and abilities in connection with his/her work.
- D. As required by law, the employee will show evidence of his/her continued freedom from active tuberculosis by a tuberculin skin test. For those who submit medical evidence that a skin test is not medically feasible, the Board shall pay the cost of a chest x-ray at a facility designated by the Board. Failure to comply shall result in an automatic suspension without pay and if said employee does not comply thereafter within one week, such employee shall be a voluntary quit.

ARTICLE V

No Strike Clause

- A. The Union and the Board recognize that strikes, lockouts, and other forms of work stoppage by employees or the Board are contrary to law and public policy. The Union and the Board subscribe to the principle that differences shall be resolved by peaceful and appropriate means without interruption of the school program. During the life of this Agreement, the Union shall not cause, authorize, sanction or condone, nor shall any member of the Union or any employee, take part in any strike, sit-down, stay-in, slow-down, work stoppage, curtailment of work sympathy strike or other interference with the operation of the Board of any kind for any reason, including a labor dispute between the Board and any other labor organization. The Union shall not cause, authorize, sanction or condone nor shall any member of the Union, or any employee, take part in any picketing of the Board's buildings, offices, or premises because of a labor dispute with this Board.
- B. The Union agrees that the Board shall have the right to discipline, including discharge, all employees who violate this article and such action shall not be subject to the Grievance Procedure or arbitration provisions of this Agreement; except for the sole question as to whether or not the employee in fact violated this article.
- C. During the life of this Agreement, the Union shall not cause or permit its members to cause, nor shall any employee in the bargaining unit engage in any strike or restriction of work or refuse to perform work because of a labor dispute between the Board or any company employed by the Board and any other labor organization, whether or not the other labor organization establishes a picket line.

ARTICLE VI

Grievance Procedure

A. Definition

A grievance is defined as an alleged violation, misinterpretation, or misapplication of a specific article and/or section of this Agreement. If any such grievance arises, there shall be no stoppage or suspension of work on account of such difference, but the grievance shall be submitted to the following Grievance Procedure.

B. Steps of Procedure

Step One Verbal. The employee who feels that he/she has a grievance shall first take the matter up verbally with the transportation supervisor or his/her designee, within seven (7) working days following the act or condition, which is the basis of his/her grievance, and the supervisor will attempt to resolve it with him/her.

Step Two Written to Human Resources Supervisor. In the event the matter is not resolved in Step One, the grievance shall, within seven (7) working days of the discussion at Step One, be reduced to writing and submitted to the Human Resources Supervisor of Non-Certified Staff or his/her designee. The written grievance shall specify the section(s) violated, the events that caused the alleged violation, the remedy sought, and shall be signed by the employee involved.

Within seven (7) working days of receipt of the written grievance, the Human Resources Supervisor shall arrange a conference with the grievant and up to two (2) members of the Grievance Committee, with the view of satisfactorily resolving the grievance. The Human Resources Supervisor or his/her designee shall answer the grievance in writing within seven (7) days of said conference.

There shall be allowed, should the grievant and Union so choose, one additional union representative at the various levels of the Grievance Procedure.

Step Three Assistant Superintendent of Human Resources/Labor Relations Appeal. In the event the matter is not resolved at Step Two, the grievance may, within seven (7) working days of the receipt of the Human Resources Supervisor's answer in Step Two, be appealed to the Assistant Superintendent or his/her designee. Such appeal shall be in writing.

Within ten (10) working days of receipt of the written appeal, the Assistant Superintendent for Human Resources/Labor Relations or his/her designee shall arrange a conference. At the Union's option the grievant(s), a member of the Grievance Committee, and a staff representative may be present. They shall meet with representatives of the Board with the view of satisfactorily resolving the grievance. The Assistant Superintendent or his/her designee shall answer the grievance in writing within ten (10) working days after said conference.

C. Time Limits

Any grievance not processed within the applicable time limits (including dates for filing the grievance initially) and not advanced to the next step within the applicable time limits shall be deemed abandoned. If the grievance is not answered by the employer within the applicable time limits, it shall be automatically advanced to the next step. Time limits may be extended by the Board and the Union in writing; then the new date shall prevail. It is further agreed that the parties may, by mutual written agreement, bypass a step or steps contained herein and otherwise resolve the grievance.

D. The conferences, discussions, and or meetings in the Grievance Procedure shall be scheduled at a time when there is no disruption of normal scheduled routine and duties. Grievances or

appeals shall be reduced to writing during nonworking hours.

- E. The Board shall not be required to pay back wages beyond thirty (30) days prior to the date a written grievance is filed.
1. All claims for back wages shall be limited to the amount of wages that the employee would otherwise have earned, less any unemployment or other compensation that he/she may have received from any source during the period of back pay.
 2. No decision in any one grievance shall require a retroactive wage adjustment in any other grievance, unless such grievance has been designated as a representative grievance by mutual written agreement of the parties, provided, however, if a grievance involves more than one employee, one member of the group may file a grievance at Step Two if the grievance names all the employees involved and is signed by all involved.
- F. Any grievance not fully processed prior to the expiration of this Agreement shall be subject to negotiations unless otherwise agreed. Any grievance, which arose prior to the effective date of this Agreement, shall not be processed.
- G. No grievance shall be filed or processed further by any employee or the Union after the effective date of the employee's resignation.
- H. Any agreement reached by representatives of the Board and the Union is binding on all employees and supervisors affected and cannot be changed by any individual.

ARTICLE VII

Arbitration

- A. Any grievance, which does not allege a violation of a specific article and section of this Agreement, when filed, may be processed through Step Three of the Grievance Procedure, but will not be arbitrable.
- B. If a grievance is not resolved at Step Three of the Grievance Procedure, and if it involves an alleged violation of a specific article and section of this Agreement, the Union may submit the grievance to arbitration by written notice delivered to the Assistant Superintendent or his/her designee fifteen (15) days after receipt of the Assistant Superintendent's answer in Step Three. Written notice shall identify the provisions of this Agreement allegedly violated, shall state the issues involved, and the relief requested. If no such notice is given within the prescribed period and in the prescribed form, the Board's answer shall be final and binding on the Union, the employee or employees involved, and the Board.
- C. In the event notice of intent to arbitrate is given to the Board by the Union, the District may, at its option, schedule a Board level hearing with representative(s) of the Board prior to proceeding to select an arbitrator. In the event such a hearing is to be held, the Assistant Superintendent or his/her designee shall notify the Union within five (5) workdays of receipt of the notice of intent to arbitrate. Thereafter, a representative(s) of the Board will meet with the Union within twenty-one (21) days for purposes of attempting to resolve the grievance. The Board shall render its decision in writing within thirty (30) days after holding said meeting.
- D. Following receipt of the notice to arbitrate, or following a Board level hearing, the Union and the Board will confer at a mutually agreeable time to select an arbitrator. If an arbitrator is not selected within ten (10) days following receipt of the written notice to arbitrate, or the Board's answer if a Board hearing is held, the Union may, within the next five (5) days only, apply in writing to the Federal Mediation and Conciliation Services for arbitration under its rules.

- E. The jurisdiction of the arbitrator shall be limited to the determination of grievances, which involve an alleged violation of a specific article and section of this Agreement. If either party shall claim before the arbitrator that a particular grievance fails to meet the tests of arbitrability, the arbitrator shall proceed to decide such issue before proceeding to hear the case upon the merits, including giving the parties the opportunity of filing post-hearing briefs.

If the grievance concerns matters not subject to Arbitration, the Arbitrator shall return the grievance and all documents relating thereto, to the parties without decision. It is agreed that no more than one grievance may be submitted to the same Arbitrator at the same time unless otherwise mutually agreed in writing.

F. Powers of the Arbitrator

The arbitrator shall have no power to add to, subtract from, alter, or modify any of the terms of this Agreement. He/she shall have no power to change any practice, policy, or rule of the Board nor to substitute his/her judgment for that of the Board as to the reasonableness of any such practice, policy, or rule, unless such policy, practice, or rule is in violation of a specific article and section of this Agreement. His/her powers shall be limited to deciding whether there has been a violation of the express article(s) and section(s) of this Agreement as alleged; it being understood that any matter not specifically set forth herein remains within the reserved rights of the Board.

It is further specifically understood that the arbitrator shall have no power to interpret any state or federal law or state or federal administrative rule or regulation.

- G. Upon request of either party, a transcript of the hearing shall be made and furnished the arbitrator with the Board and the Union having an opportunity to purchase their own copy. At the close of the hearing, the arbitrator shall afford the Board and the Union a reasonable opportunity to furnish briefs.
- H. The arbitrator's decision, when made in accordance with his/her jurisdiction and authority established by this Agreement, shall be final and binding upon the Union, the employee or employees involved, and the Board.
- I. Each party shall pay its own costs of processing grievances in this arbitration procedure. The fee of the arbitrator's travel expenses, and the cost of any room or facilities and the expenses of the arbitration, including the expense of a transcript, if any, shall be borne equally by the parties. The fees and wages of representatives, counsel, witnesses, or other persons attending the hearing on behalf of a party and all other expenses shall be borne by the party incurring the same.

ARTICLE VIII

Seniority

A. Seniority Date

Upon completion of the probationary period, each employee shall have seniority within an occupational group, said seniority date shall be as set forth in Section B below. Seniority shall accumulate from that date so long as it is not lost through any other provisions of this Agreement. The two occupational groups are: 1) Driver and 2) Bus Assistant.

B. Probationary Period

New employees shall be on probation for a period of the first ninety (90) working days of regularly scheduled employment. Unless the employee was a substitute driver/assistant for one (1) calendar year, defined as the anniversary of his/her start date, in which case the probationary period shall be the first forty (40) working days of employment. Probationary period must be completed within six (6) months in which work is scheduled. During the probationary period, an employee shall have no seniority and the Board shall have the sole right to discharge, discipline, transfer, demote or layoff employee for any reason and no grievance shall arise therefrom. Upon completion of the probationary period, an employee's name shall be placed on the seniority list for their respective occupational group as of the first day worked as a probationary employee herein.

In the event that a position becomes available and no qualified substitutes exist, said position will be filled in appropriate manner at the discretion of the Board. New hires from outside the unit will be placed on probation until they complete a probationary period of one school year.

C. Loss of Seniority

An employee shall be terminated and lose seniority rights if the employee:

1. Voluntarily quits or fails to return from a leave of absence.
2. Is discharged and not reinstated.
3. Is laid off for a period of eighteen (18) months.
4. Is absent on unpaid leave for a period of eighteen (18) months.
5. Fails to report to work after recall within seven (7) calendar days after the certified mailing of a notice of recall by the Board. The date of mailing shall be as recorded in the Board records. Mailing shall be to the last known address of the employee as shown in the Board records. Employees are responsible for keeping the Board informed of their last known address.
6. Is absent from work without reasonable excuse for two (2) consecutive working days without notice of such excuse within said period.

- D. Prior to the signing of this Agreement, the Board and the Union have initialed an up-to-date seniority list. The Board will post a copy of the seniority list on the bulletin board. Any corrections therein must be requested in writing within ten (10) days thereafter; and, if not so requested, the list shall become final at the end of such period. In no event shall the Board be required to pay back pay or any other form of remuneration by reason of the correction of an error on such original list.

Up-to-date seniority lists shall be posted on the bulletin boards by October 1 of each year. Said list shall include the names of all employees currently on layoff with recall rights. Any corrections in seniority dates established since the last posted seniority list must be requested in writing within ten (10) days after said posting; and, if not so requested, said list shall become final at the end of such period.

- E. A driver, who applies for an open position as a bus assistant, or a bus assistant who applies for an open position as a driver, shall have the following regulations apply:

1. a) Any such applications for driver and bus assistant positions for any given school year must be submitted in writing to the Human Resources Supervisor of Non-Certified Staff prior to the final day of regular student

attendance in the preceding school year. Any applications must then be resubmitted annually for continued consideration.

- b) An applicant(s) who may not have been selected for a position in a new employee group, either as a bus assistant or driver, will, in the event they make a written request, be entitled to a conference with a Board representative(s) to discuss the reasons they were not given the position. It is understood that the determination of the Board in this regard as to selection or nonselection is final and is not subject to the grievance and arbitration articles, provided such determination shall not be exercised in an arbitrary or capricious manner.
- 2. Current employees who have complied with the conditions outlined in Article VIII, Section E.1.a. and who possess the necessary skills and abilities and who are otherwise qualified will be awarded the open position.
- 3. Said employee shall be considered, except as noted herein, as a new employee in the new occupational group. Seniority date for purposes of job bidding, layoffs, transfers, and promotions will be calculated from the effective date when the employee begins work in the new group.
- 4. An exception to Subsection 3 above shall be that the employee's accumulated paid sick days shall be adjusted either up or down based upon the ratio of the employee's new and old pay rates.
- 5.
 - a) When an employee is assigned to a job under the provisions of this section, he/she shall be given a reasonable trial period of time, but not more than sixty (60) scheduled workdays to demonstrate his/her ability to perform the job in a satisfactory manner. Such sixty- (60) day trial period may be extended by mutual agreement between the Board and the Union. If the employee is unable to demonstrate his/her ability to perform the job in a satisfactory manner, he/she shall be returned to his/her former job status. The supervisor's determination as to the "demonstration of such ability" and the "performance in a satisfactory manner" shall be final.
 - b) The position left vacant by an employee who is selected for an open position in the opposite occupational group, i.e. either bus assistant or driver groups, shall be filled in whatever manner the Board so chooses until a final decision is reached by the Board per Subsection a above. In this event the provisions of applicable sections of Article X, Assignment and Transfers, shall not apply until the Board has reached said final decision.
- F. The chairperson of the Union Committee shall be granted top seniority for layoff and recall purposes only, provided he/she is capable of performing the available work in a satisfactory manner, and unless he/she elects to resign.
- G. In the event of two (2) or more employees having identical seniority, the individual having the earliest hire date shall be considered most senior. In the event of identical hire dates, the Board shall use the last four (4) digits of the affected employee's social security number to break the tie. The employee with the highest last four numbers shall be deemed the most senior.

ARTICLE IX

Layoff and Recall

- A. Employees shall be laid off and recalled by the Board in the following manner:

1. First, probationary employees in the affected classification will be laid off in any order determined by the Board and will have no recall rights.
 2. Second, seniority employees shall be laid off and recalled in classifications in reverse order of their seniority, providing the remaining employees have the ability and qualifications (both physical and otherwise) to perform the available work. The determination of the supervisor as to qualifications and ability in this regard shall be final, provided that said determination shall not be exercised in an arbitrary or capricious manner. It is understood that seniority employees on layoff, who have said ability and qualifications, will be recalled to their classification before a new employee is hired.
- B. Temporary adjustments to the work force due to such things as breakdown of equipment, fire, Act of God, civil disorder, or other conditions beyond the control of the District, may be made without regard to the provisions of this article for a period not to exceed ten (10) workdays unless otherwise agreed between the District and the Union.
- C. Under normal circumstances, after the start of a school year, an employee to be laid off pursuant to Section A above, will be given ten (10) days' notice of the expected date of layoff.
- D. In the event of recall, notice of recall shall be by certified mail to the last recorded address of the employee as it appears on the records of the Board, and upon failure to report within seven (7) calendar days of mailing of such notice, such failure shall be considered to be a voluntary quit. The date of mailing shall be as recorded in the Board records. In the event the employee fails to report to work because of inability by reason of proven illness, it is understood that the Board may demand written proof, including a doctor's statement of such an illness. Employees are responsible for keeping the Board informed of their last known address.
- E. Seniority does not accumulate during time spent on layoff. Seniority shall only be earned during any month when the employee was employed for more than one-half (½) of the calendar month. Employees recalled within the eighteen- (18) month period following layoff shall be deemed to have, on the date rehired, the seniority, which had been accumulated up to the layoff.

ARTICLE X

Assignment and Transfer

- A. The Board shall determine the runs to be assigned to each route and the make-up and number of runs in each route. Such routes will be awarded or assigned in accordance with the provisions of this article.
1. The Board shall assign all drivers and bus assistants in keeping with the remaining provisions of this article, provided the employee(s) meets the qualifications necessary for the equipment used on a route and in keeping with the provisions of Section D of this article in regard to ability and qualifications.
 2. Prior to the opening of school each year, a mandatory general meeting will be held at which, among other things employees will be given information regarding their initial fall runs. These initial fall runs shall be the run, which the employee was assigned to during the final week of student attendance of the prior school year. Runs which cannot be so recognized, i.e. as last year's run, in the judgment of the Administration, shall be assigned to employees at the discretion of the Administration.

Employees shall retain the freedom of choice in regards to the date of their attendance to the required State Mandated Certification classes. The Board shall make every effort to make these listings of dates available as soon as they are made known to them. All state-required/district-required training shall be completed before the employees' first official duty day.

On this mandatory meeting date, in addition to all special education drivers, where a regular route has changed, all drivers on changed routes shall be required to conduct a practice run when requested by his/her supervisor.

Said mandatory meeting shall, under normal circumstances, be held on the Monday of the week immediately preceding the week school opens, provided, however, if this is not possible, it will be scheduled sometime during the fourteen-(14) calendar-day period prior to the initial day of student attendance in the fall and shall be assigned at the discretion of the Administration.

Prior to the scheduling of training between the end of the school year and the mandatory meeting (as noted herein), the Administration agrees to review the scheduling of said training with Union representation prior to the end of the school year.

Notice of the meeting will be sent to the last-known address of all returning employees, and said notice shall be communicated to employees as soon as practicable but in no event any later than forty-eight (48) hours prior to the meeting. Failure on the part of the Board to send such notice will release the employee from the obligation of mandatory attendance and resultant loss of his/her route according to provisions in Article XX.C.

If a returning employee fails to appear at this general meeting noted herein without an excuse acceptable to the supervisor and without timely notice, he/she shall forfeit rights to their old route and their route shall be assigned in a manner as determined by the Board until the regular bid meeting is held on the last Monday in October.

3. All assignments made (per Subsection 2 above) shall be considered to be a temporary assignment until regular, year long routes are designated. There shall be a mandatory general meeting held on the second Monday in October at which employees shall be allowed to bid on all routes. If an employee fails to appear at this general meeting, due to an emergency situation (supported by appropriate documentation), a predetermined Union representative shall make the choice for said employee.

All routes, which will be the subject of the general bid meeting, will be presented to all employees for their review three (3) working days prior to the bid meeting.

Written notice of the meeting will be communicated to employees and said notice shall be communicated no later than forty-eight (48) hours prior to the meeting. Failure on the part of the Board to communicate such notice will release the employee from the obligation of mandatory attendance and resultant loss of his/her route, according to provisions in article XX. C.

Routes assigned herein as permanent shall take effect seven (7) calendar days following the bid, for bus drivers. Bus assistant permanent assignments will take place fourteen (14) calendars days following the bid for bus assistants.

- B. 1. When a new route is created during the school year, or when an employee quits, dies, retires, is transferred, is discharged, or is removed for disciplinary reasons, and the route is not eliminated, i.e. the Board elects to continue the route, said route shall be filled with either an employee who is on layoff status or with a new probationary employee, except as provided below.
2. The obligation to fill the positions noted above in Subsection 1 with a new unit employee shall not apply to new routes or vacancies, per the above, when such an opening occurs within the last forty-five (45) calendar days prior to the last official student attendance day of the school year. In such an instance, the Board may temporarily fill the vacancy

as it sees fit. Such vacancies will be posted for the next year's mandatory general meeting.

3. It is understood that the Board retains the right to make any additions or deletions to or from regular routes as a result of emergencies, short-term runs, and any other such temporary assignments of less than yearlong duration as it (i.e., the Board) sees fit, provided however, that "noon runs" shall be filled per Section 4 below.
 4. In the event a "noon run" is created after the beginning of the school year such runs shall be assigned to the highest seniored available driver or bus assistant expressing an interest in such run. It is understood that drivers and bus assistants are not considered available to assume such a "noon run" in the event the "noon run" conflicts with the driver or bus assistant's normal scheduled work assignment. The judgment of the Board as to when a conflict in such scheduling will disallow a driver or bus assistant from eligibility for a "noon run" is final, providing such judgment is not arrived at in any arbitrary or capricious manner.
- C. The Board may fill any vacancy on a temporary basis (not more than forty-five (45) school days), pending the permanent assignment of an employee in accordance with the provisions of this article.
- D. In the filling of open routes and vacancies as outlined above, the Board agrees to consider applications per the following:
- As between the employees possessing the necessary ability and qualifications (both physical and otherwise), the senior employee applying for the vacancy shall be appointed to fill the same. The determination of the supervisor as to qualifications and ability in this regard, shall be final provided that said determination shall not be exercised in an arbitrary or capricious manner.
- E. When an employee is assigned to a job under the provisions of this article, he/she shall be given a reasonable trial period of time, but not more than thirty (30) scheduled workdays to demonstrate his/her ability to perform the job in a satisfactory manner. Such thirty- (30) day trial period may be extended by mutual agreement between the Board and the Union. If the employee is unable to demonstrate his/her ability to perform the job in a satisfactory manner, he/she shall be returned to his/her former job status. The supervisor's determination as to the "demonstration of such ability" and the "performance in a satisfactory manner" shall be final, provided, that said determination shall not be exercised in an arbitrary or capricious manner.
- F. Employees removed from a route for disciplinary reasons will not displace other employees but may be assigned to existing vacancies not required to be posted, or should the Board so choose, said employees may be assigned to a vacancy in a priority over any or all of the provisions of Section B. Employees so assigned will be paid the appropriate rate of their new job.
- G. Any reassignments necessitated by layoffs will be accomplished by having those employees whose routes were eliminated exercise their seniority to assume routes vacated by the employees laid off, subject to the provisions of Article IX, Layoffs.
- H. Vacancies created by employees on paid time off, paid sick days, or certain leaves of absence (as stated under Article XVIII Leaves of Absence), need not be posted but may be filled in any manner the Board determines. Employees returning from same will assume their own route.
- I. In the event a transfer or change in routes and/or assignment is necessary, due to such things as breakdown of equipment, fire, Act of God, civil disorder or other conditions beyond the control of the District, and in the event the Board elects not to layoff any employees because of the need of a temporary change, such transfer may be made without regard to the provisions of this

article for a period not to exceed thirty (30) working days unless otherwise agreed between the District and the Union.

- J. Transfers and changes of assignment shall be on a voluntary basis whenever possible. The Board and Union agree that occasions may arise when it is necessary to remove an employee from his/her route for administrative purposes (in lieu of discipline). Employees so removed shall serve as substitutes in their classification with no loss of pay or benefits. Such transfers shall be made upon the recommendation of the Board or its designee after discussion of the transfer with the Union. Employees will be given two (2) weeks' notice of involuntary transfer and the reasons for the transfer, if the employee so requests, except that in those cases in which a transfer must be made in less than two (2) weeks, such notice will be given as time will allow. In making involuntary transfers, the needs of the individual employee will be considered to the extent that these do not conflict with the instructional requirements and best interests of the school system and students. Employees shall have the right to file a grievance protesting an involuntary transfer. Such transfers shall remain in effect for a period of time not to exceed thirty (30) working days, provided that said thirty (30) working days may be extended by mutual agreement of the Board and the Union.
- K. No Union member will be required to perform any management duties.
- L. To the extent possible, union member(s) will be given first preference to noon runs (between 9:00 a.m. to 2:00 pm.), also all after-school programs, according to seniority.
- M. Where the law requires and/or when special education routes exceed ten (10) students, bus assistant will be used.

ARTICLE XI

Discipline and Discharge

- A. The Board shall retain the right to establish, change, amend and enforce reasonable rules for employees to follow, and it shall have the right to discipline, discharge, and/or demote employees who violate these rules.
- B. New or amended rules will be posted on a bulletin board ten (10) working days prior to their effective date, except in cases of emergencies. A copy will be forwarded to the Union prior to such posting. Upon request, the Board will discuss the new or amended rule with the Union prior to the effective date.
- C.
 - 1. The parties recognize the importance of maintaining a high standard of conduct among employees. When disciplinary measures are taken, they shall include, but not be limited to, the following:
 - a. Verbal Counseling
 - b. Written Reprimand
 - c. Suspension
 - d. Discharge

It is essential that based on the seriousness of and nature of the offense and other applicable factors, disciplinary action may be initiated at any step.

Prior disciplines that exceed eighteen months from the date issued and prior suspensions that exceed thirty months from the date issued may not be considered when determining current disciplines.

- 2. A unit member will have the right upon his/her own request, to review the contents of his/her own personnel file at the Board of Education Building. The review will be

conducted in the presence of an administrator, or his/her designee, responsible for the safekeeping of such file. Privileged information, such as, but not limited to confidential personal references, are specifically exempted from such review. Such review shall be conducted at a mutually agreeable time. No more than two (2) requests per year shall be honored.

In the event an employee disagrees with the contents of an item, which has been placed in his/her file, the employee may submit a written statement explaining his or her position.

- D. After completion of the probationary period, no employee shall be discharged or disciplined without just cause. Just cause for discipline or discharge shall include, but is not limited to: inefficiency or inability to perform assigned duties; excessive absenteeism or tardiness; failure to notify his/her supervisor of anticipated absenteeism prior to reporting time; tampering with one's time card or punching the time card of another; failure to take a required physical examination; insubordination; overt discourtesy or abusive treatment to students, parents and/or the public; gross neglect of duty; falsification of employment application or other records; advising or directing employees to disregard the orders of supervision; the unauthorized release of information regarding students of the School District to a student, teacher, fellow employee, or any unauthorized person; or for other misconduct which reflects adversely on the School District or impairs the employee's ability to perform his/her job.
- E. In the event an employee is discharged, the Union will be notified promptly. Any grievance protesting the discharge must be filed by the employee at Step Three of the Grievance Procedure within seven (7) workdays following notification of the discharge. The written grievance shall contain the information set forth in Step Two of the Grievance Procedure.
- F. An employee (or group of employees) who is called into the office for the purpose of investigating disciplinary matters may request the presence of a Committee person, and such request shall not be denied if the Committee person is readily available. Employees will not normally be disciplined or given any reprimand in the presence of students or employees (excluding Committee members).
- G. Employees shall refrain from discussing collective bargaining of the local Union and Union grievance matters with pupils during working hours.

ARTICLE XII

New or Changed Job

When a new job is placed in existence which cannot be properly placed in the existing classification and rate structure, or an existing job is changed or combined with another job to the extent that materially different skills and responsibilities are required, the Union will be notified in writing. The Board will, after written notice to the Union, assign a rate to the new or changed job, which shall be considered temporary for a period of thirty (30) days following the date of notification to the Union. During this period, the Union may request in writing a meeting with the Board to review the classification. When a rate is agreed upon, it shall be applied retroactive to the first day the employee began work on the job unless otherwise agreed to. If no written request is filed within the thirty- (30) day period the rate shall become permanent at the end of such period. If a written request is filed and an agreement is reached on the rate within thirty (30) days from the date of the request, the Union may file a written grievance at Step Three of the Grievance Procedure within ten (10) days following expiration of said thirty- (30) day period.

ARTICLE XIII

Representation

- A. The Board recognizes the right of its employees to select a three- (3) person Grievance/Negotiating Committee, one of whom shall be designated the Unit President, for the purpose of handling grievances and negotiating the labor agreement. The Committee members shall be seniority employees of the Board, with at least one (1) year of seniority.
- B. The Board will not recognize any Committee member until his/her name and position have been submitted in writing by the Union to the Board.
- C. Since the Board and Union subscribe to the "work-then-grieve principal," neither the Union nor any of its officers, nor any Committee member shall advise or direct employees to disregard the order or instructions of management.

ARTICLE XIV

Hours and Days of Work

- A. Employee work schedules are as determined by the Board of Education. The Board reserves the right to schedule the work hours of employees according to the needs of the school system, and to establish or change the length of time of the workweek or workday. The Board reserves the right to establish and change work schedules as economic conditions and available work require. It is further understood that the calendar for the school year shall be established and revised from time to time by the Board of Education.
- B. Employees shall make prior arrangements with their designated supervisor whenever they expect to absent themselves from work. Failing in this responsibility, employees must notify their supervisor or designee at least one (1) hour before the workday begins and report their absence together with the reason for the absence and the intended date of return. Employees who fail to comply with this provision will be considered to be absent without pay for the day in question. In addition, they shall be subject to disciplinary action.
- C. In the event that an individual employee is absent from work, the individual must call the employer herself/himself (except in dire emergency) to report their absence. The employer must be able to verify work duties to ensure proper coverage.
- D. In the event an employee reports late for work without having properly notified his/her immediate supervisor, the employee may be sent home without pay for that work period, if other arrangements have been made to cover the employee's work.
- E. For purposes of determining hours worked on a daily basis, employees will have their routes timed by the Board. In the event there is a disagreement in regard to a "route time," the employee involved shall serve notice upon the Board of said disagreement. The Board agrees to meet with the Union in an attempt to mutually resolve said disagreement. If the matter has not been mutually resolved within a ten- (10) workday period, the issue shall, if the Union so chooses, be considered as a grievance and processed under the Grievance Procedure.
- F. Each employee will have his or her own time card and is responsible for his or her own time card. Employees who deliberately do not punch their own time card in and/or out or who deliberately punch or tamper with another employee's time card may be subject to discipline, up to and including discharge.
- G. Overtime
 - 1. All work performed in excess of forty (40) hours in any work week shall constitute overtime work and shall be paid at the rate of time and one-half of the employee's regular rate of pay. All work performed on Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King Day, Easter, Memorial Day, Labor Day, shall be paid at the rate of two (2) times the employee's regular rate of pay for hours worked, in

addition to regular scheduled holiday pay (subject to Article XVII, Section A1 & 2). This provision for double time on the holidays mentioned above shall not be applicable in any week where the particular employee is absent by reason of an unexcused or unexplained absence.

2. The Board reserves the right to require employees to work overtime on a reasonable basis and when the nature of the work requires that it can be completed at a time that necessitates overtime.
 3. Overtime will be permitted only when authorized by a supervisor.
 4. The allowance of an overtime premium on any hour excludes that hour from consideration for overtime payment on any other basis, thus eliminating any double or pyramiding overtime payment.
 5. Absent time paid for shall not be considered as time worked for purposes of computing overtime.
- H. The Board agrees to make a good faith effort, under normal circumstances, to ensure that an employee's work schedule is such that, in the event said employee, after completion of his/her initial period of work, is scheduled or required to return for an additional period of work, said additional work period(s) shall be for a minimum of two (2) consecutive hours. This does not apply to field trips.
- I. Unit members shall be allowed an appropriate amount of time for required pre-trip checks, as spelled out by administrative officials, per the current practice in this regard.

ARTICLE XV

Field Trips

A. Definitions

1. Field trips normally are those provided certain groups for athletic events, educational events, entertainment, or extracurricular activities.
2. It is understood that the scheduling of all field trips remains the exclusive prerogative of the Board. Field trips may be shuttled as determined by the supervisor.
3. The determination of whether or not a particular field trip requires a Saginaw School District bus shall remain an exclusive right of the Board. If it is determined that a field trip requires a Saginaw School District bus, said bus(es) shall be driven by unit drivers, possessing the necessary ability and qualifications, both physical and otherwise. The determination of the supervisor as to ability and qualifications in this regard shall be final, provided that said determination shall not be exercised in an arbitrary or capricious manner. Said driver must be available and willing to perform such work, in keeping with the provisions of this article.
4. The Board agrees, on a semester basis, and upon a written request by the Union, to review, with a three- (3) person Union Committee, the Board's practice in regard to field trip scheduling in which the Board has not utilized Saginaw School District buses.
5. The Board agrees to make a good faith effort to continue to utilize bargaining unit personnel for field trips, in keeping with the current practice in this regard and statutory obligations and restrictions regarding subcontracting. Should the Board deem it necessary to alter this practice, the provisions of Appendix F shall apply.

- B. Application for Field Trips – Regular drivers desiring to drive field trips shall file an application with the supervisor of Transportation on forms to be provided by the Board. Applications shall be made within the first five (5) workdays for each semester. Any driver who fails to file a timely application for field trip consideration shall be ineligible for such trips for a given semester, provided however, he/she may be assigned to such trip per the provisions of Section F below.
- C. 1. Except in unusual circumstances, the Board shall maintain a posting of field trips scheduled two weeks in advance, with said posting to be in the Transportation Department office.
2. Field trips will be offered to all regular drivers according to seniority at the beginning of each semester and then by hours on a weekly rotating basis, for each given semester. Drivers who do not desire field trips will submit in writing a “Waiver of Field Trip Eligibility” form to the Transportation Supervisor, per the timelines noted in Section B above. The Board agrees to continue to attempt to provide a fair distribution of field trips to those drivers so requesting for the purpose of equalizing hours, to the extent possible under normal circumstances.
3. The Board agrees to provide, under normal circumstances and where practicable, estimated driving time, for each field trip, if so requested by the driver.
4. Drivers shall not be eligible for field trips if the trip interferes with the operational portion of a driver’s normal scheduled hours of work.
5. Drivers may, at the discretion of the Board, be declared ineligible for a field trip assignment, if, by reason of such assignment, said driver would be paid at an overtime rate or the field trip has not otherwise been assigned within three (3) school days before the trip commences.
6. a) All field trips worked, refused, or not taken because of a leave of absence or because of sick leave utilization per Subsection *b* below shall be so recorded.
- b) Field trips shall be recorded as “absent” when an employee is scheduled but is unavailable for the field trip because of a call-in on the preceding or same day.
- c) Field trips not taken because of the reasons noted in Subsections *a* and *b* above shall be recorded as “refused.”
- d) Refused day field trips will be charged at three (3) hours and night/weekend trips will be charged at five (5) hours.
7. The Board agrees to provide a summary of the field trip assignments every two weeks.
- D. There shall be two field trip boards:
1. Night trips (any trip departing on a weekday after 4:30 PM) and weekend trips (any trip departing on Saturday or Sunday).
2. Day trips (any trip departing on a weekday prior to 4:30 PM).
- E. 1. Refusal – Drivers who refuse two (2) consecutive calls without valid provable reason acceptable to the District, may be subject to removal from the field trip board for that semester.
2. Drivers who fail, without valid notice and without valid provable reason acceptable to the District, to show up for assigned trips, shall be subject to removal for the semester from the field trip board, and may be subject to additional disciplinary measures.

- F. 1. Should it be necessary to do so, the Board shall have the right to require all drivers to work a reasonable amount of field trips. Seniority shall be considered in such circumstances, provided that in regard to such nonvoluntary field trip assignment(s) the employee must possess the necessary ability and qualifications, both physical and otherwise. The determination of the supervisor as to ability and qualifications in this regard shall be final, provided that said determination shall not be exercised in an arbitrary or capricious manner. It is understood that, in the event the field trip list has been exhausted, the Board reserves the right to staff field trips as it deems necessary, from within or outside the unit.
2. In the event a driver is scheduled for a field trip as a result of a nonvoluntary assignment, and if said nonvoluntary assignment interferes with a driver being able to complete his/her regularly assigned route, then he/she shall be paid an amount for the day which is at least equal to the employee's regular rate of pay for his/her normal route.
- G. Notification of Field Trips – Employees will be notified of field trips at least thirty-six (36) hours in advance, when possible; provided that, if notification is given on the same day as the field trip, the employee will not be required to take the trip and such refusal will not alter his/her position on the field trip board. It is understood, however, that should it be necessary to do so, the Board retains the right to staff a field trip per the provisions of Section F above.
- H. There shall be no trading of trips among drivers.
- I. It is understood that in the event an error is made in assigning a field trip, the Board shall have no obligation to pay back pay by reason of such error but rather the employee in question will be given the next appropriate field trip opportunity, as determined by the Board.
- J. An employee reporting for field trips that are not a continuation of a work period will result in the employee receiving a minimum in total wages of an amount equal to two (2) hours at his/her regular rate.

Field trips considered to come under the provisions of this section shall be those trips which are scheduled to begin thirty (30) minutes or more following the completion of the employee's regularly scheduled work period.

When field trips are cancelled under this section, the employee may pick, within forty-eight (48) hours a field trip that remains on the same field trip board. If the board(s) is empty, the employee must wait until his/her next available rotation for which the employee is available and otherwise eligible for the field trip.

ARTICLE XVI

Sick Leave

- A. 1. Regular, permanent, seniority employees shall earn and be credited with one (1) workday of sick leave per month of work, up to a maximum of ten (10) days per year. Unused sick days can be accumulated, from year to year with no maximum cap. Sick leave shall be available for use by seniority employees for personal illness or disability or other purposes authorized herein, provided, however, the employee must have complied with the call-in provisions set forth in Article XIV, Section B, provided, however, exceptions to the one- (1) hour call-in requirement will be considered by the Board in cases of extreme, proven emergency. For purposes of this article, an employee must work at least five (5) days in the month to be considered to have worked a month of service to qualify for a sick leave day for said month.

Year I and Year II of this agreement, regular, permanent, seniority employees shall earn an additional .5 (1/2) sick day after ten (10) years of continuous service to be awarded on July 1. Regular, permanent, seniority employees shall earn an additional one (1) sick day after fifteen (15) years of continuous service to be awarded July 1.

2. Other purposes for which sick leave may be utilized are as follows:

- a) Three (3) days per year when emergency illness or injury requires an employee to make arrangements for necessary medical and nursing care.
- b) A maximum of five (5) days per year for a critical illness in the immediate family.
- c) A maximum of three (3) days per year may be approved for emergency or catastrophe.
- d) A maximum of four (4) days per year may be used to compensate unit member for loss of pay due to scheduled professional development and or act of God days (Article XX.G.1.a.). In the event that schools are closed for three (3) or more consecutive days due to weather-related conditions, an additional one (1) day may be used from sick bank to compensate unit members not to exceed more than five days in one year.

The employee may be required to present adequate documentation showing the need for leaves under this provision. Approval for these leaves are at the discretion of the Board and that decision is not subject to the grievance or arbitration provisions of this Agreement.

- B. Employees normally working less than twenty (20) hours per week are ineligible to receive sick leave pay.
- C. In all cases of illness, the Board of Education retains the right to request a doctor's statement verifying the illness, per Article X, Section B. Additionally, in cases of suspected abuse, the Board may require the employee to submit to a medical examination by a licensed physician of the Board's choice before sick leave pay is allowed or an employee is allowed to return to work after an illness.
- D. An employee who abuses sick leave benefits by falsification of reasons for such leave shall be subject to immediate disciplinary action, up to and including discharge, and may be required to make restitution of any compensation he/she received during the period of absence.
- E. An employee shall not be eligible to use paid sick days for the following:
 1. For days of absence other than regular workdays.
 2. During layoff periods or during leaves of absence.
 3. During vacation periods.
- F. An employee on sick leave shall be considered as having quit without notice if he/she engages in other employment without the Board's written consent.
- G. Vacancies created on paid sick days need not be posted but may be filled in any manner the Board determines. Employees returning from same will assume their route.

- H. After an employee has used up five (5) or more sick days a year, the Board reserves the right to require a doctor's statement, per Article XX, Section B, for each subsequent absence in the school year before additional sick leave days are granted. Exceptions for the purpose of computing the five (5) days' time lost due to accidents, illness, or disability-use rule are those compensable under the Michigan Workers' Compensation Act and time lost due to accidents, illness, or disability requiring hospitalization. Furthermore, this provision shall not apply until an employee has been put on notice that he/she must comply with the provisions for subsequent use of personal sick leave. Said doctor's statement shall be at the employee's expense.
- I. In the event a regular, full-time seniority employee is injured on the job and the injury is compensable under Workers' Compensation, such employee shall be ineligible to draw full sick leave upon the initiation of Workers' Compensation payments. Such employee may, at that time, if he/she chooses, be paid the difference between his/her normal straight-time rate of pay and the amount received as Worker's Compensation during such time as he/she would normally be scheduled to work. If the employee chooses to be paid this difference, it shall be accounted for by a deduction from the employee's accumulated sick leave, such benefit to continue only until the employee's accumulated sick leave is exhausted. It is understood here that the employee shall in no case ever receive more in total compensation per day than the equivalent of his/her normal daily straight time.
- J. Any seniority, regular employee subject to this Agreement who, while actively working, shall suffer death in his/her immediate family, shall, if they have sufficient, accumulated paid sick days, be granted a leave of absence with basic pay at the daily straight-time rate for any regularly scheduled working days when he/she is required to be absent to discharge specific obligations placed upon him/her by reason of such death.

All funeral day usage beyond one (1) day under this section for immediate family shall be deducted from an employee's accrued sick leave. All funeral leaves must be used for funeral purposes only and not for other purposes. Any single usage of said funeral leave shall not exceed three (3) working days, or one (1) working day, as applicable, per the provisions listed below. Application for such leave shall be filed in writing, in advance, on the proper Request for Leave form. In cases of emergency, the supervisor shall be notified, and the request shall be filed in writing upon the employee's return to work. The Board may require proof of death, relationship to the deceased, and/or proof of attendance at the funeral, as well as proof of the fulfillment of other rules of eligibility of this article before making any payment under this article.

1. An employee shall be eligible for two paid days of the three (3) days of funeral leave for a death in his/her immediate family. Only one (1) of the three allowable days comes from the sick bank. Immediate family for purposes of this section shall include: father, mother, son, daughter, brother, sister, husband, wife, grandfather, grandmother, and grandchildren.
- K.
1. If an employee has completed ten (10) or more years of service in the Saginaw School System, he/she will be paid for one-half ($\frac{1}{2}$) of all accumulated, unused sick days to a maximum of one-hundred-twenty (120) days the first year of this contract, and one-hundred-twenty-five (125) days the second year, at the rate of one-half ($\frac{1}{2}$) of his/her current pay scale (regular classification rate) but not less than ten dollars (\$10.00) per day, if he/she terminates his/her employment under any of the following:
 - a) Voluntary retirement under the provisions of the State Retirement Act;
 - b) Forced retirement, prior to regular retirement age, for reasons of a disabling health condition;
 - c) Death while in the employ of the Board.

2. It is understood that for purposes of payment of monies under this Article, the Board and the Union agree to be bound by the retirement eligibility provisions of the Michigan Public School Employees Retirement System.
3. If, after receiving a payment under this provision, a former employee resumes employment with the Board, and again becomes eligible for payment thereunder, payments previously made will be deducted from any subsequent payments to which he/she may become entitled.
4. As an incentive plan for employees to establish a perfect attendance, the District agrees to pay each full-time employee (thirty (30) or more hours per week) \$550 and other employees working twenty (20) to twenty-nine (29) hours per week \$300 who maintained a perfect attendance during the previous school year. Perfect attendance will be determined by a committee of equal numbers from the Union and Management.

ARTICLE XVII

Holidays

- A. Each regular, permanent, seniority employee shall be entitled to receive holiday pay calculated at the employee's straight-time rate times the number of hours normally scheduled to work in the day in question (not to exceed eight (8) hours) for the following days:

1. 2010-2011

Friday, September 3 before Labor Day
Monday, September 6, Labor Day
Thursday, November 25, Thanksgiving Day and
Friday, November 26
Thursday, December 23, and
Friday, December 24, Christmas Day
Thursday, December 30, and
Friday, December 31, New Year's Day
Monday, January 17 Martin Luther King Day
Friday, April 22, Good Friday and
Monday, April 25, Easter
Monday, May 30, Memorial Day

2. 2011-2012

Friday, September 2 before Labor Day
Monday, September 5, Labor Day
Thursday, November 24, Thanksgiving Day and
Friday, November 25
Friday, December 23 and
Monday, December 26 Christmas Day
Friday, December 30 and
Monday, January 2 New Year's Day
Monday, January 16, Martin Luther King Day
Friday, April 6, Good Friday and
Monday, April 9, Easter
Monday, May 28, Memorial Day

- B. In the event that school is in session and/or teachers are scheduled to report for work on any of the regularly scheduled holidays, then the employee who works that day shall receive holiday pay and their normal hourly rate for all hours worked. (Exception to the above language shall be defined in Article XIV, Section F1.)

C. Eligibility Requirements

The employee shall be eligible for the holiday pay, under the following conditions:

1. Employees must work all scheduled hours in the workday prior to and all the scheduled hours in the workday following a holiday in order to be eligible for such holiday pay, unless the employee submits a physician's certificate of illness for the absence or the absence is mutually agreed to.
2. The employee would otherwise have been scheduled to work on such day if it had not been observed as a holiday.
3. Employees on leave of absence, except as noted otherwise, and employees on layoff are not eligible for holiday pay.

ARTICLE XVIII

Leaves of Absence

A. 1. Unpaid Personal Leave – Long Term

The Board may grant a personal leave of absence without pay or fringe benefits to seniority employees with one (1) or more years of service for periods of up to one (1) year, including any extensions. Written request for such leave and extension thereof must be submitted to the employee's supervisor and approved by the Assistant Superintendent for Human Resources/Labor Relations or his/her designee, in writing prior to the start of the leave.

2. Unpaid Personal Leave – Short Term

The Board may grant a short-term leave of absence, to seniority employees with one (1) or more years of service. Short-term leave is defined for purposes of this section as five (5) working days or less. Said leave will be unpaid but all other benefits will continue to accrue. Upon their return from such leave, employees will resume their duties on their own route with no loss of service credit (seniority). Application for such leave must be made in writing on the request for leave form and must be returned to the employee's immediate supervisor and to the Human Resources Supervisor of Non-Certified Staff at least five (5) working days in advance of the requested leave time.

3. The Board agrees to consider applications for unpaid leaves of absence on a first-filed, first-considered basis. It is understood that the Board retains the final right to refuse any and all unpaid personal leave applications should it be determined that the granting of unpaid personal leaves at any one period of time interferes with the efficient operation of the schools.

B. Paid Personal Business Day

1. All full-time seniority employees shall be granted two (2) days of paid personal business leave per year for urgent, necessary, legal, business, household or family matters which require absence during work hours. Application for personal business leave will be made at least three (3) workdays before taking such leave (except in the case of emergencies).
2. Personal business leave days will be granted only if a satisfactory replacement can be obtained. It is understood that a personal business leave may be denied before and/or after a school holiday or vacation period.

3. The Board may limit, on any given day, the number of employees absent under this provision. No leave will be granted if it interferes with the efficient operation of the District.

C. Unpaid Health Leave

1. A seniority employee who is unable to perform his/her assigned duties because of personal illness or disability and who has exhausted all paid sick days, shall, at the written recommendation of a physician, be granted an unpaid health leave of absence, without pay or fringe benefits, for the duration of said illness or disability for a period up to six (6) months, renewable at up to six- (6) month intervals for a total leave period not to exceed eighteen (18) months, including extensions. Thereafter, the employee(s) shall be subject to the provisions of Article VIII Seniority, Section C4. A written request for a health leave, including the written recommendation of a physician, must be submitted to the Assistant Superintendent for Human Resources/Labor Relations or his/her designee prior to the exhaustion of paid sick days. Within five (5) workdays prior to the expiration of the leave, the employee shall notify the Board, in writing, of his/her intent to return to work. A written statement from the physician certifying the employee's fitness to fulfill his/her normal duties must be presented before the employee will be allowed to return to work.
2. An employee taking unpaid health leave will be credited with a period of time in which the Board shall "hold open" the employee's own particular route. Said credit shall be for a period of thirty (30) calendar days provided that in addition to this thirty- (30) day period one (1) workday of credit will be granted for each paid sick day which the employee had accumulated at the time of onset of the illness or disability. During this period of time, the involved employee's route shall be considered as "held open" pending his/her return from leave. During this "hold open" time, the Board shall have the right to fill the position in any manner it chooses, and said position will not be considered as an open route and not subject to posting. In any case, the total unpaid leave "hold open" period is not to exceed a six- (6) month period. Thereafter, the Board shall fill the position under the auspices of Article X, Section B1.

- D. An employee on military leave for service in the armed forces of the United States shall be reinstated upon completion of such service in accordance with the applicable laws.

- E. If an employee reasonably expects that he/she will be unable to perform his/her normal daily duties and functions for more than five (5) working days due to personal illness or disability, he/she shall promptly notify the Assistant Superintendent for Human Resources/Labor Relations or his/her designee of this fact, and shall provide the Assistant Superintendent or his/her designee, at the employee's expense, with a physician's statement setting forth the specific illness or disability, the date the disability is expected to commence, and the expected length of the absence.

F. Union Convention Leave

A leave of absence without pay shall be granted to an employee elected or selected by the Union to attend educational classes or conventions conducted by the Union. The number gone at any one time shall not exceed two (2) employees and the total number of working days shall not exceed twenty (20) in any one calendar year. Such a leave will only be granted when there are substitutes available to cover the employee's assignment. Upon their return from such leave, they will resume their duties on their route with no loss of benefits of any kind i.e., fringe benefits or service credit (seniority).

G. Union Representative Leave

The Board may grant, without pay or fringe benefits, an unpaid leave of absence for not more than one (1) employee appointed by the Union to a full-time international union representative position, provided written application certifying the position appointed to and the duration of the leave is submitted by the international union to the Personnel Department at least thirty (30) days prior to the requested effective date. Said Union leave shall be for a minimum of six (6) months and a maximum of one year.

H. Jury Duty

A special leave of absence shall be granted to an employee for jury duty purposes, according to the following provisions:

1. An employee who is summoned and reports for jury duty, as prescribed by applicable law for each day on which he/she performs jury duty and on which he/she otherwise would have been scheduled to work for the Board, including summer work, shall be paid the difference between what he/she receives from the Court as daily jury duty fees and what he/she would have earned from his/her employment with the Board on that day on the basis of the number of hours the employee was scheduled to work at his/her regular rate of pay.
2. The employee must present to the appropriate administrator a written proper notice of said jury duty involvement as far in advance as possible.
3. It is understood and agreed that employees shall be required to report for work on any and all days and at all hours when they are not sitting as a juror.
4. To be eligible for jury duty pay differential, an employee must furnish the Board with a written statement from the appropriate public official listing the amount and the dates on which they received pay for jury duty.
5. Should the employer so request, it is agreed that employees will cooperate in seeking to be excused from jury duty.
6. The Board's obligation to pay an employee for jury duty as provided herein is limited to a maximum of thirty (30) days in any calendar year.

I. Leaves – General Conditions

1. Any leave granted under this article, except as otherwise stated herein, will be with the understanding that it is a leave of absence from the Saginaw Public Schools and not from a particular position or route. Upon return from leave, reasonable effort will be made to assign the employee to the same or comparable position, if available, i.e. vacant; however, employees are not guaranteed their former assignment but will be placed in a position for which they are qualified. If there are no such positions available i.e., no vacant positions for which the employee is qualified, then the Board will attempt to place said employee in a position for which he/she is qualified as early as is feasible and the employee shall continue to remain on leave status.
2. Except as otherwise stated herein, no benefits of any kind i.e., pay and fringe benefits will accrue to any employee during any leave of absence granted under this article, nor shall they accumulate any length of service credit i.e., seniority, while on any leave of absence, under this article. Upon return from a leave of absence, an employee's accumulated unused sick leave benefit accumulated at the time the leave commenced, will be restored to them, and they will be placed on the same position of the salary schedule that was held at the start of the leave. An exception to this section shall be

made for those employees who are on a health leave of absence due to injury or illness compensable under the Michigan Workers' Compensation law. For such individuals, it is understood that they receive applicable workers' compensation benefits and continue to accumulate seniority for up to one year. Thereafter, they shall be subject to the provisions of Article VIII, Section C4.

3. All leaves of absence and extensions thereof must be applied for in writing and on the appropriate form as provided by the Personnel Department and must be approved, in writing, prior to the start of the leave. Under normal circumstances, such approval or denial will be forthcoming in writing within five (5) workdays of receipt of the request. The request shall state the reason the leave of absence is being requested and the length of time off which the employee desires. All leave requests and requests for extensions of leaves must be submitted at least two (2) weeks prior to commencement except in cases of emergency or as otherwise provided herein.
4. Any employee who obtains any employment while on any leave of absence shall be subject to disciplinary action, unless the employee was specifically granted the leave for that purpose or unless said employment was agreed to by the Board.

ARTICLE XIX

Dues Checkoff

- A. Upon ratification and signing of this Agreement and during the life of this Agreement and in accordance with the terms of the forms of "Authorization for Payroll Deduction" hereinafter set forth, and to the extent the laws of the State of Michigan permit, the Board agrees to deduct from the pay of employees who are Union members, the regular, periodic and uniform dues of the Union and initiation fee levied in accordance with the Constitution and By-laws of the Union, provided, however, that the Union will first present to the Board, a certified checkoff list consisting of a statement of the amount of the dues certified by a duly authorized representative of the Union and written authorization in suitable form signed by the employees allowing such deductions and payments to the Union at least twelve (12) workdays prior to the date on which the dues are to be deducted. Under normal circumstances, dues will be deducted from the first pay of the month. The Union accepts full responsibility for the authenticity of each authorization and shall indemnify and save the Board harmless against any and all claims, demands, suits, or other forms of liability that shall arise out of or by reason of any actions taken or not taken by the District under the terms of this section. With respect to the sums deducted by the Board pursuant to authorization of the employee, the Board agrees promptly to remit to the International Secretary-Treasurer of the Union, Five Gateway Center, Pittsburgh, Pennsylvania, or at such address the International designates. A copy of such list shall be furnished to the Financial Secretary of the Local Union and the Local Unit President. The Union agrees promptly to furnish any information needed by the employer to fulfill the provisions of this article and not otherwise available to the employer.
- B. The written authorization for employees will be on the "Authorization for Payroll Deductions" as shown below:

CHECKOFF AUTHORIZATION FOR UNITED STEELWORKERS

Company

Plant

Date

Year

Pursuant to this authorization and assignment, please deduct from my pay each month, while I am in employment with the collective bargaining unit in the Company, and irrespective of my membership status in the Union, monthly dues, assessments and (if owing by me) an initiation fee each as designated by the International Treasurer of the Union.

The aforesaid payment shall be remitted promptly by you to James D. English, or his successor, International Secretary-Treasurer of the United Steelworkers, or its successor, Five Gateway Center, Pittsburgh, Pa. 15222

This assignment and authorization shall be effective and cannot be cancelled for a period of one (1) year from the date appearing above or until the termination date of the current collective bargaining agreement between the Company and the Union, whichever occurs sooner.

I hereby voluntarily authorize you to continue the above authorization and assignment in effect after the expiration of the shorter of the periods above specified, for further successive periods of one (1) year from such date. I agree that this authorization and assignment shall become effective and cannot be cancelled by me during any of such years, but that I may cancel and revoke by giving to the appropriate management representative of the plant in which I am then employed, an individual written notice signed by me and which shall be postmarked or received by the Company within fifteen days following the expiration of any such year or within the fifteen days following the termination date of any collective bargaining agreement between the Company and the Union covering my employment if such date shall occur within one of such annual periods. Such notice of revocation shall become effective respecting the dues for the month following the month in which such written notice is given; a copy of any such notice will be given by me to the Financial Secretary of the Local Union.

Local Union No _____
 United Steelworkers

Signature _____

Check No _____

Ledger No _____

Form 530

(ORIGINAL)

- C. Financial Responsibility – It is recognized that, because of religious convictions or otherwise, some employees may object to joining any organization engaged in collective bargaining. At the same time, it is recognized that the proper negotiation and administration of collective bargaining agreements entail expense to the Union. To this end, in the event an employee shall not, upon completion of his/her probationary period or within thirty (30) days following signing of this Agreement, whichever is later, join the Union and execute an authorization for dues deduction in accordance with this article, such employees shall, as a condition of continued employment by the Board, cause to be paid to the Union, a sum equivalent to the dues of the Union (up to the amount permissible under applicable law). In the event that such sum shall remain unpaid for a period of sixty (60) days following the date the same is due and after sixty (60) days written notice thereof has been given to the employee by the Union, the Board agrees that in order to effectuate the purposes of the Public Employment Relations Act and this agreement, the services of such employee shall be discontinued.
- D. In the event that this article shall be challenged through the Michigan Employment Relations Commission, or the courts, the Union will pay the reasonable expenses of such proceedings, including agreeing to defend such action through its own legal counsel, and pay the costs of all transcripts. The Union further agrees to indemnify and save the Board harmless against any and all claims, demands, suits, judgments, damages or other forms of liability or expense, including any back pay awarded by the courts and/or any unemployment compensation costs incurred by the District.
- E. The Local Unit President will be furnished a list of all newly hired employees. Responsibility for signing an authorization card rests with the newly hired employee and the local Union. Such signed authorization card(s) must be submitted to, and initialed by, the Personnel Manager of Non-Certified Staff or his/her designee.

ARTICLE XX

General Information

- A. The Board may at its discretion require that employees submit to physical and/or mental tests and examinations by a Board-appointed doctor when such tests and examinations are considered necessary to the Board in maintaining a capable work force, employee health and safety, etc. provided, however, the Board will pay the cost of such tests and examinations and provided, further, that the Union is notified of such action.

In the event a dispute arises as to an employee's physical and/or mental ability to perform his/her work based upon a medical examination pursuant to this section, the parties shall jointly contact the University of Michigan Center or Ford Hospital in Detroit and arrange to obtain an

opinion from a specialist. The cost of such an examination will be shared equally by the parties.

B. Any doctor's statement submitted to the District by an employee shall contain the following information:

- a. Dates of treatment by doctor;
- b. Diagnosis;
- c. A statement as to whether or not the employee may return to work; and
- d. The date the employee may return to work.

Any such doctor's statement must be presented to the District upon the employee's return to work from the leave or disability in question.

In the event of an illness or injury which has resulted in lost work time for which the employee has seen his/her doctor, the employee agrees to provide the appropriate release to the Board to secure specific and detailed medical data from the employee's doctor when such information is necessary and has been requested in writing by the Board indicating such need.

C. Address and Phone

It shall be the responsibility of each employee to notify the Board of any change of address or telephone number and such change shall be entered on the Board's records. The employee's address and telephone number as it appears on the Board's records shall be conclusive when used in connection with this article and with layoffs, recall, and other notices.

D. Resignation

Employees agree to notify the Board, in writing, as soon as possible, of any intent to terminate employment with the Board. It is recognized by the employees that they have an ethical responsibility to notify the Board of their resignation at least two (2) weeks prior to their expected last date of employment.

E. Evaluation

If seniority employees are formally evaluated in writing, by management representatives, the evaluation report shall be shown to the employee and signed by the employee if it is acceptable to him/her. If the employee does not agree with the evaluation, the employee will be only required to initial as evidence of having seen or read the evaluation report. The employee shall have the right to attach his/her written comments to the evaluation, it being understood that the evaluation itself is not subject to the Grievance Procedure.

F. No Discrimination

It is the policy of the board and the Union that there shall be no discrimination against any employee because of sex, race, color, religion, creed, age, or national origin. In the event the employee elects to pursue his/her legal or statutory remedy before the Equal Employment Opportunity Commission or the Michigan Civil Rights Commission, an alleged violation of this section shall not be processed beyond Step Three of the Grievance Procedure.

G. Inclement Weather

1. a. Effective after August 1, 1987. Revised August 2010

Employees who are not required to work on scheduled days of student instruction which are not held because of conditions not within the control of the school authorities such as inclement weather, fires, epidemics, mechanical breakdowns, or other such conditions will not be paid for such days unless they have submitted a request on the

proper leave form with supervisor approval, to be paid under Article XVI., A.2.d.. Employees shall work on any rescheduled days of student instruction, which are established by the Board and will be paid at their regular rate of pay.

- b. Employees who report for work on time and are sent home under the provisions of this section (Inclement Weather) shall be paid for all hours worked or paid for two (2) hours, whichever is greater.
- 2. In the event an employee receives unemployment compensation benefits (which as used herein also includes underemployment benefits during the school year associated with his/her regular work assignment) due to days of instruction not being held when scheduled because of conditions not within the control of school authorities as stated above, and those days of instruction are rescheduled so that the employee works those instructional days at a later time, the employee will have his/her pay adjusted, such that his/her unemployment compensation plus the wages paid to the employee for the year will be equal to the regular annual wages he/she would have earned for the school year had there not been scheduled days of instruction cancelled for such reasons.
- H. The Board agrees that it will have this Agreement printed with a copy of said Agreement to be given to each unit member.
- I. This Agreement may not be modified in whole or in part by the parties except by mutual agreement, by an instrument, in writing, duly executed by both parties.
- J. Technology

The Board reserves the right to utilize any or all methods of technology (i.e. cameras, gps systems, radios, cell phones etc) to promote positive and acceptable behavior on any vehicles in the fleet. No technology will be added to any vehicles without previous notification to the Union.

ARTICLE XXI

Insurance

- A. 1. The Board will, for the duration of this Agreement, pay the premiums to provide term life insurance for regular full-time employees (working thirty (30) or more hours per week) thirty thousand and 00/100 (\$30,000) dollars, and for all new employees working from twenty (20) to twenty-nine (29) hours per week, fifteen thousand and 00/100 (\$15,000), for seniority employees, subject to the terms and conditions in the policy in effect between the Board and the carrier. All new employees (hired after July 1, 2000) working from twenty (20) to twenty-nine (29) hours per week will be given fifteen thousand and 00/100 (\$15,000) dollars life insurance. Those employees currently receiving life insurance of twenty-five thousand and 00/100 (\$25,000) dollars, working less than thirty (30) hours per week will continue. The Board shall have the right to select the carrier, change carriers, and/or bid carriers.
- 2. Field trips and all other short-term assignments are not to be included in the calculation of "regularly scheduled work."
- 3. An eligible employee shall become insured on the first day of the month following the completion of the eligibility time lines as listed herein.
- 4. A newly eligible unit member who is eligible for enrollment in the term life insurance program must elect to be covered, by filling out the necessary forms in the Fringe Benefits office, within thirty (30) calendar days from his or her effective date of eligibility.

- B. The Board will pay, for the duration of this Agreement, premiums up to the level specified in Subsection 2 below, so as to provide a level of health insurance coverage for full-time eligible seniority employees, not otherwise covered by the Board or not otherwise eligible to be covered by another comparable employer-paid group health plan who enroll in one of the below-noted plans, during the appropriate enrollment period, subject to the terms and conditions specified in the Board's group insurance contracts. For purposes of this section, comparable coverage shall be measured by a comparison with the typical benefits available in a standard Blue Cross/Blue Shield MVF-1 PPO plan without any riders. There will be no cash credit or credits to any employee in the unit.

1. Unit members may elect coverage from the following health care plan:

a) Health Plus (IF)

Health Plus (IF) for Saginaw Board of Education. Effective date of eligibility for this program is February 1, 2009.

2. a) The monthly maximum health premium amounts to be paid by the Board shall be as follows:

<u>2010-2011</u>	<u>2011-2012</u>	
\$522.00	\$548.22	(premium for employees working thirty (30) hours or more per week)

\$261.00	\$274.11	(employees working twenty (20) to twenty-nine (29) hours per week.
----------	----------	--------------------------------------------------------------------

<u>2010-2011</u>	<u>2011-2012</u>	
\$522.00	\$522.00	As capped amount paid toward medical insurance each year.

Effective July 1, 2011, employer pays first 5% of any premium increase. Employees pay additional amount up to 5%. Thereafter, each party pays one-half (1/2) of such premium over a 10% increase.

\$0 co-pay for single coverage, excluding summer months. Balance difference between Board Cap and Premium payment for single will be applied to summer months, per contract.

- b) In the event the monthly maximum health premium amounts specified in Subsection *a* above exceed the monthly premium amounts which are required by the employee's selected Plan and level, then any excess amounts shall be applied to the health insurance premium amounts which are required under the provisions of Subsection 4 (below) this article. These provisions shall not apply to an employee who terminates his/her employment with the Board, ceases to be eligible for Board-paid insurance coverage or elects to terminate his/her coverage prior to the end of a given school year.

Further, there shall be no cash rebates to any employee for any reason whatsoever associated with these provisions.

3. It is understood that any cost of insurance over and above the amount listed above in Subsection *2a* shall be borne by the employee and the employee shall authorize a payroll deduction for such to be taken from his/her pay.

4. Notwithstanding the above, eligible employees choosing to enroll in the Board-sponsored health, dental, and vision insurance program must pay the full monthly cost of said insurance premiums for the months of July and August, or said insurance coverage shall terminate on July 1. The amount of such insurance premiums will be deducted from the affected employee's pay in equal installments during the preceding school year. If the employee terminates his/her employment with the Board, ceases to be eligible for Board-paid insurance coverage or elects to terminate his/her coverage, all amounts deducted from the employee's pay under this provision will be refunded.
5. An employee shall be regularly scheduled to work at least thirty (30) hours a week (employees working twenty (20) to twenty-nine (29) hours per week will pay the prorated amount of fifty percent (50%) of the health insurance premium) to be eligible for the health insurance benefits set forth herein. Field trips and all other short-term assignments are not to be included in the calculation of regularly scheduled work. Eligibility as to the thirty- (30) hour requirement shall be determined immediately following the mandatory bid meeting in October for each respective year and shall be based upon an employee's regularly scheduled number of hours as of that date. If an employee is eligible per this and other requirements, said employee shall then remain insured until the following year except that if an employee voluntarily chooses to be employed for less than thirty (30) hours, or if his/her eligibility status should change, coverage shall cease as of that point. Coverage is not guaranteed from year to year but is determined by the above-mentioned eligibility date, as well as the other provisions of this article.
6. Any employee who elects to terminate his/her health insurance coverage shall not be eligible to enroll in the Board plan(s) until the next open enrollment period.
7. For an eligible full-time seniority employee to become insured, the employee must enroll in the plan(s) within thirty (30) days of the employee's eligibility or during an annual open enrollment period and must pay one hundred percent (100%) of the full cost of the premium for coverage for the plan for two months in a method as determined by the District.
8. The Board reserves the right to select the provider of medical insurance benefits, to change providers, to become self-insured and/or to determine the method of providing the negotiated benefits, (including bidding such benefits), the negotiated benefits to be comparable to the basic Blue Cross/Blue Shield MVF-1 plan.

Probationary employees who have no health insurance coverage may sign up for the Board-provided hospitalization plan, but will have the full amount of the premium deducted from their checks until they complete their probationary period and become eligible as noted herein.

- C. Effective on January 1, 1999, the Board will for the duration of this Agreement, pay the premiums to provide vision insurance for all regular full-time (scheduled to work at least thirty (30) hours a week; employees working twenty (20) to twenty-nine (29) hours per week will pay the prorated amount of fifty percent (50%) of the vision insurance premium), seniority unit members not otherwise covered by another vision insurance plan, subject to the terms and conditions in the policy in effect between the Board and the carrier. The same eligibility and enrollment requirements established for health insurance shall apply to vision insurance. Said vision insurance shall provide benefits comparable to the MESSA VSP II plan. The Board reserves the right to select the provider of vision insurance benefits, to change providers, to become self-insured and/or to determine the method of providing the negotiated benefits, (including bidding such benefits). The Board's liability under this section is limited to the cost of the insurance premium and not benefits.

- D. Effective November 1, 2000, the Board will, for the duration of this Agreement, pay the premiums to provide a dental care program for all regular employees (scheduled to work at least thirty (30) hours a week; employees working twenty (20) to twenty-nine (29) hours per week will pay the prorated amount of fifty percent (50%) of the dental insurance premium) not otherwise covered by another dental care plan, subject to the terms and conditions of the policy in effect between the Board and the carrier. Said dental care program shall provide benefits equivalent to those which are provided to other school unit employees.

Delta Dental Selected Benefits:

Class I Benefits (Basic Dental Services) – 80%

Class II Benefits (Prosthodontic Services) – 60%

Class III Benefits (Orthodontic Services) – 50%

- E. Eligibility, coverage, and benefits under the insurance plans in this article are subject to the terms and conditions including any waiting period or other time limits contained in the contracts between the Board and the carrier. Any rebates or refunds on premiums paid by the Board shall accrue to the Board. No matter contained in this article shall be subject to the Grievance Procedure, except the fulfillment of the specific obligations undertaken by the Board.
- F. The insurance coverage listed above shall be discontinued on the day the employee's services are terminated for any reason or the day he/she goes on any leave of absence, except as otherwise noted, without pay or is laid off. In addition, all insurance coverages shall be discontinued six (6) months after an employee has been off work with a claim filed under the provisions of the Workers' Disability Compensation Act, subject to Appendix C.
- G. It is understood that the Board, by payment of the premium payments required to provide the coverage set forth herein, shall be relieved from all liability with respect to the benefits provided by the aforementioned insurance coverage.

ARTICLE XXII

Summer Work

- A. Driver and bus assistant routes, which are available as a result of the scheduling of regular student instruction programs during the summer months which require the transportation of students as part of the program(s) and on which the Board elects to utilize Saginaw School District buses and drivers-bus assistants, shall be filled first by drivers and bus assistants regularly employed by the Saginaw School system, subject to the conditions noted herein, i.e. in this article only.
- B. Drivers and bus assistants should understand that there is no guarantee of work during the summer months' period. Any summer employment as a driver or bus assistant is dependent upon the availability of work, as the needs of the School System might dictate.
- C. Drivers and bus assistants must submit a written request, signed by the applying employee, to the transportation supervisor, at least one month prior to the final day of regular student attendance, indicating whether or not they desire to work during the summer months. Such application(s) must be renewed annually for each subsequent summer employment period.
- D. As between employees possessing the necessary ability and qualifications (both physical and otherwise, and as outlined in Article IV of this Agreement, i.e. "General Qualifications for Employment and Continued Employment") the senior employee applying for the vacancy shall be appointed to fill the same. The determination of the supervisor as to qualifications and ability in this regard shall be final provided that said determination shall not be exercised in an arbitrary or capricious manner.

- E. The provisions of Article VII, VIII, IX, X, XII, XV, XVI, XVII, XVIII, and XXI, shall not apply to summer driver/bus assistant positions provided however, Article XVI, Section I and J, and XVII., H. shall apply to summer school driver/bus assistant positions.
- F. Drivers and bus assistants, employed during the summer months, do not accrue any additional seniority credit for purposes of Article VIII, Section A.
- G. In the event sufficient numbers of regular school year drivers and bus assistants are not available, per the provisions of this article, to fill the summer positions, the Board shall fill such positions as it sees fit and any such hires shall not be subject to the provisions of this Agreement and more specifically, of this article.
- H. Drivers and bus assistants employed during the summer months will be entitled to utilize accumulated sick leave providing the driver/bus assistant has not been cited for more than two (2) unexcused absences during the preceding school year. Drivers and bus assistants will also be extended premium payments toward insurances for each week worked during the summer providing runs assigned are equal to or exceed twenty (20) hours per week in a 5-day work week; or 16 hours per week in a 4-day work week. To become eligible, individuals must be enrolled for medical insurance during the previous school year.

Those individuals regularly scheduled to work during the summer months, should they miss work due to illness, providing they are in compliance with this article, they will be eligible for insurance credit. This language does not apply to any other absence.

Insurance credit is calculated for an eight (8) week period of time from July 1, 2010 through August 24, 2012, providing work is available.

When additional programs such as 21st Century and Jump Start Kindergarten are added to summer runs, Bus Assistants shall be considered for summer work, providing they have fifteen (15) or more years of seniority, they are physically able to perform the work, and their assistance is needed.

ARTICLE XXIIISupervisors Working

- A. Under normal circumstances, supervisors shall not perform bargaining unit work if it will result in the termination or layoff of employment of a seniority bargaining unit member.

ARTICLE XXIVWaiver

The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Union and the Board, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subjects or matters not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement.

ARTICLE XXVSeparability and Savings

If any article or section of this Agreement, or any appendix thereto, shall be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any article or section shall be restrained by such tribunal pending a final determination as to its validity, the remainder of this Agreement, and any appendix thereto, or the application of such article or section to persons or circumstances other than those as to which it has been held invalid or as to which compliance with or enforcement of has been restrained shall not be effected thereby. By mutual written agreement, the parties may meet to renegotiate a replacement article or section.

ARTICLE XXVIEntire Agreement

The parties agree that this Agreement incorporates their full and complete understanding and that any prior oral agreements or practices are superseded by the terms of this Agreement. Any amendment or agreement supplemented hereto shall not be binding upon either party unless executed in writing by the parties hereto.

ARTICLE XXVII**Termination**

This Agreement shall be in full force and effect from August 27, 2010, shall continue in full force and effect without reopening until August 31, 2012, unless either party shall give a written notice to the other at least sixty (60) days prior to August 31, 2012, of its desire to modify, amend or terminate this Agreement. In the absence of the aforesaid sixty-(60) day notice, the Agreement shall automatically be renewed under the same terms and conditions for a period of one (1) year. A notice of desire to modify, amend, or terminate shall have the effect of terminating the entire Agreement but only as of the expiration date of the Agreement, August 31, 2012, subject to mutual consent to the contrary.

Notice in accordance with the above section shall be given by certified mail.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of August 27, 2010.

SAGINAW BOARD OF EDUCATION

UNITED STEELWORKERS,
AFL-CIO-CLC

Delena Spates-Allen, President

Leo W. Gerard, Int'l President

Mattie L. Thompson, Secretary

Stanley W. Johnson, Int'l Secretary-Treasurer

Tom Conway, Int'l Vice Pres - Admin

Fred Redmond, Int'l Vice Pres- Human Affairs

Mike Bolton, Director, District 2

Bill Laney, Staff Representative

LOCAL 8410-01

Kenneth Berry, Unit President

Jennifer Bates, Committee

Shanta Rowe, Committee

APPENDIX A**Salary Schedules**

1.

Drivers		Step 1	Step 2
A.	2010-11 Year I 0% Increase	\$13.62	\$15.23
B.	2011-12 Year II 0% Increase	\$13.62	\$15.23

2.

Assistants		Step 1	Step 2
A.	2010-11 Year I 0% Increase	\$ 10.02	\$10.95
B.	2011-12 Year II 0% Increase	\$ 10.02	\$10.95

Step one shall apply for all employees in their first full year of employment and Step two shall be effective on the employee's first anniversary date.

Should any other bargaining unit groups representing Board employees receive a wage increase, United Steelworkers Local 8410 will share in the same wage % increase for years 2010-2011 and 2011-2012.

APPENDIX B**Food Lodging Allowance**

Employees who are required to be out of the School District on school business or field trips will be allowed a food, lodging allowance provided they meet the conditions listed:

- a. Meals – Trip is over seventy-five (75) miles and/or five (5) hours of continuous work.
- b. Lodging – Trip is over seventy-five (75) miles and is twenty-four (24) hours or longer in duration.

Meals

A food allowance will be provided based on the following schedule:

- Breakfast – When travel commences prior to 8:00 AM
- Lunch – When travel commences prior to 11:30 AM
- Dinner – When travel commences prior to 5:00 PM

The food, lodging allowance will not be authorized for any regular scheduled route or if the special assignment/field trip is five (5) or more hours only.

Meal Allowance

- Breakfast – \$4.50
- Lunch – \$6.00
- Dinner – \$9.00

This includes all tips and taxes. Receipts must be obtained and turned into the transportation supervisor before any reimbursement will be made.

Lodging

All lodging must be approved by the transportation supervisor. Lodging will normally be authorized if the special assignment/field trip is twenty-four (24) hours or more. Receipts for all lodging include taxes and tips and must be turned into the transportation supervisor before reimbursement will be made.

Lodging Allowance

Lodging – Not to exceed \$40.00 per 24-hour period.

Student Discipline

At the discretion of management, when there is a persistent student discipline problem on any bus, consideration be made for a rider to be placed on that bus regardless if that particular bus is a special education bus or not.

APPENDIX C

**MEMORANDUM OF UNDERSTANDING
Family and Medical Leave Act**

1. It is understood and agreed between the parties that certain contractual allowances may be made in order to accommodate state and/or federal legislation and implementation provisions of the Family and Medical Leave Act (PL- 103-3).
2. In the event that it is required that provisions of the Family and Medical Leave Act are to be implemented, and provided further that said Family and Medical Leave Act provisions are in conflict with provisions of the collective bargaining agreement between United Steelworkers, Local 8410-01, and the Saginaw Board of Education, the Administration agrees to meet with representatives of Local 8410-01 prior to said implementation.
3. It is agreed that the following are examples of implementation procedures, which will govern the Administration in this regard:
 - a. Leaves granted under Article XVIII will be counted against an employee's annual Family and Medical Leave entitlement;
 - b. The discretionary right(s) of the Administration to either grant or refuse any and all requests for all leaves of absence(s) under Article XVIII shall not be applicable, if such a discretionary right is in conflict with a leave request granted under the provisions of the Family and Medical Leave Act.
 - c. Sections A1, A3, and I2 of Article XVIII and Section D of Article XXI shall not be applicable, regarding the nonprovision of fringe benefits to eligible employees on any leave of absence, if said employee is on an approved Family Medical Leave qualifying leave of absence. It is understood that all such premiums paid by the Board may be recovered while an employee was on an unpaid Family Medical Leave of absence, per the applicable provision of the Family Medical Leave Act.
 - d. The provisions of Article XVIII, Sections C2 (and of I1) shall not be applicable regarding the amount of time that an employee's position will be held "open" if said provisions are in conflict with a leave request granted under the provisions of the Family and Medical Leave Act.
 - e. Notwithstanding the language of Article XVIII, Section C, an employee requesting a leave of absence, under the auspices of Article XVIII, Section C, which is a qualifying Family Medical Leave Act leave, shall provide notice to the Board, according to the notice requirements of the Family Medical Leave Act.

APPENDIX D**MEMORANDUM OF UNDERSTANDING**
Health Benefits

If subsequent to ratification of this Agreement, a law is enacted which required the Board to pay for a fund or a state or national health insurance system to provide, in whole or in part, the same or similar health benefits to those already provided under this Agreement, then the health benefits provided under this Agreement shall be considered as a substitution for any provisions for similar benefits provided under such law. If any benefits of a similar nature to those provided under this Agreement are required by law and the benefits provided under this Agreement are not considered in substitute therefore, the Board shall, at its option, have the right to either reduce the benefits under this Agreement by the amount of such benefit provided under such law (provided the overall benefit level provided employees will not be reduced) or the Board shall have the right to reopen this Agreement solely on the issue of reducing health benefits so that the Board is not required to pay for the same or similar benefits.

APPENDIX E**MEMORANDUM OF UNDERSTANDING**
Drug and Alcohol Testing

It is understood and agreed between the parties that certain contractual allowances may be made in order to accommodate federal and state legislation and implementation regulations regarding rules for drug and alcohol testing of employees. Said drug and alcohol testing of employees is in implementation of regulations issued by the United States Department of Transportation and the Federal Highway Administration (FHWA) and is a requirement of certain provisions contained in the Omnibus Transportation Employee Testing Act of 1991, as part of the 1992 Department of Transportation and Related Agencies Appropriations Act.

Employees shall receive their hourly rate of pay for drug and alcohol testing implemented pursuant to this provision, if such payment is required by law.

APPENDIX F**MEMORANDUM OF UNDERSTANDING**
Provisions of PA 112

In the event PA 112 is reversed, it is agreed that before the Board permanently removes bargaining unit work regularly and normally performed by members of the bargaining unit which will result in the layoff of a member of the bargaining unit (either through contracting or transferring work out of the unit) the District will notify the Union in writing. Upon written request from the Union, filed within five (5) workdays from the notification, the Board will meet with the Union within ten (10) workdays for the request to negotiate the matter in a special conference(s), it being understood that the Board will not take any final action until after the conference(s) has been concluded.

APPENDIX G**MEMORANDUM OF UNDERSTANDING**
Shutdown

When there is a partial shutdown of the school system, Union members will be given first preference for any work available prior to subs being called.

APPENDIX H**MEMORANDUM OF UNDERSTANDING
Conducting Union Business and Reimbursement**

The Board agrees to pay any employee, while serving in any official capacity while conducting Union business given the employee notifies his or her supervisor in advance. The Union agrees to promptly reimburse the Board for any and all wages and expenses paid to any member based on the amount noted on the salary, lost time, and expense voucher.

TRANSPORTATION PROPOSAL COMPARISON

	FIRST STUDENT	First Student AL	DEAN	Dean AL	METS	METS AL
Company Profile	Started: over 22 years ago in MI. Headquarters: Cincinnati, OH, Nearest Office: Grosse Pointe, MI. Employees: over 750 in MI, School District Customers: 17 districts in MI		Started: Mid 1950's, Headquarters: Lansing MI, Nearest Office: St. Louis, MI. Employees: 1000+, School District Customers: 9 districts		Started: 1995, Headquarters: Portland, MI, School District Customers: over 42 schools and districts in MI	
Training and Safety	New drivers receive 52 hrs of training and attendants receive 16 hrs of training. Current drivers receive 20 hrs of training. Training will take place prior to January 1st. Staff will receive an additional 6 hrs of training annually.		Driver/Attendant Safety & Education Program, 10 week/36 hours, Annual. Inservicos: 4 hours each, Student Safety Training		New job training, retraining (every 6 months), cross training	
Staffing	Contract Manager, Safety/Training Staff, Maintenance Staff, Routers, Dispatchers, Drivers and Attendants. All qualified current staff will be hired.		Transportation Director, Dispatchers, Mechanics, 10% Sub-Drivers, Drivers, Attendants. All qualified current staff will be hired		Contract Manager, Maintenance Manager/ Assistant Manager, Dispatcher/ Router, Secretary, Trainer, Lead Drivers, Drivers, Aides. All qualified current staff will be hired	
Start Date	Mid year start		Mid year start		Mid year start	
Union	Will recognize union		Will recognize union		Will recognize the union. Currently only two clients with unionized employees	
Wages	Will maintain current wages and receive future raises: Staff would be paid every two weeks		Guaranteed 3 to 4 hours daily, will maintain current wages: Staff would be paid weekly		Drivers will maintain wages	
Seniority	Staff would retain their seniority		Staff would retain their seniority		METS does not have seniority. They would give existing drivers preference in routes and additional athletic and field trips.	
Benefits	Astra Insurance which is comparable to existing insurance Employee Assistance Program, Uniforms, 6 paid holidays, 5 sick days, 401K		Recognize current Seniority, Health Insurance, Vacation, Personal Days, Uniforms, Continuing Education, Employee Assistance Program: Holiday, sick and personal days would accrue at a total of 7-12 days annually dependent on schedule		\$300.00 per month, per employee who take benefits, PCSI Health, Dental vision, 401K, Uniforms, perfect attendance bonus of \$250 annually, 10 paid holidays for all employees, vacation for drivers and other full-time employees	
Fleet Specifications/ Technology	Child Check Mate, Theft Mate Alarm, Crossing Arm Front Bumper, Digital Video Monitoring System, GPS, 2 way Radio		Child Reminder Systems, GPS Tracking Systems, 2-way Communication		Video surveillance, GPS	
Fleet Purchase/ Replacement	3 new buses during each contract year. \$900,000 for 12 new replacement buses	Includes 12 Newer buses Year one, 3 New every year following	3 new buses during each contract year.	Includes 12 New buses year one, 3 New every year following	\$54 per route increase for each new replacement bus	Includes 12 New buses year one, 3 New every year following
Maintenance	Includes maintenance & parts for entire bus fleet.		Includes maintenance & parts for entire bus fleet.		Includes maintenance & parts for entire bus fleet.	
Routing System	Will use current system. Transfer to optimize routes and ensure completion		Tyler Verse Trans Route Planning Software		Will evaluate current system vs. other systems.	
Price to Purchase all of SP's buses	\$167,040		\$335,600		\$295,650	

GC 3

TRANSPORTATION PROPOSAL COMPARISON

	FIRST STUDENT	First Student Alt.	DEAN	Dean Alt.	MIETS	MIETS Alt.
Price to Purchase all of SPSD's buses more than 7 yrs old	\$89,350		\$244,200		\$43,300	
Annual Inflationary Rate	3.30%	2.40%	2.75%	3.70%	5%	4.60%
Field Trip Rate	\$24/hour		\$35/hour		\$38/hour	
Total Cost-11/12 (annualized)	\$ 1,838,344.00	\$ 1,708,264.80	\$ 1,927,923.00	\$ 2,016,518.00	\$ 1,585,306.00	\$ 1,712,224.80
Total Cost-12/13	\$ 1,899,009.35	\$ 1,749,304.76	\$ 1,980,941.00	\$ 2,091,699.00	\$ 1,661,304.00	\$ 1,792,899.58
Total Cost-13/14	\$ 1,961,676.66	\$ 1,791,420.01	\$ 2,035,417.00	\$ 2,168,947.00	\$ 1,744,369.20	\$ 1,875,508.11
Management Availability	2 - 4 weeks after award of contract at no additional cost		2 - 3 weeks. No longer than one month after Board Approval		2 - 4 weeks after award of contract at no additional cost	

Alternate Proposals Include 12 new (Dean and MIETS) or newer (First Student) buses in year one. All other proposal factors are the same

Current FY12 Budget that would be replaced with the contract totals \$1,821,757.

First Student's alternate proposal would yield an annual savings of \$113,492. Because the contract will not begin until January, the savings is expected to be \$56,746 in FY12.



Carlton D. Jenkins, Ph.D., Superintendent of Schools

660 Millard Street • Saginaw, Michigan 48607
Telephone 989-399-6600 • www.spsd.net**MEMORANDUM**

TO: Board of Education

FROM: Dr. Carlton D. Jenkins, Superintendent of Schools

DATE: February 10, 2012

SUBJECT: Action Item – Transportation Contract with First Student

Recommendation:

It is the recommendation of the Superintendent of Schools to award a five-year transportation service contract to First Student in the amount of \$9,519,420 (a breakdown by year is listed below). This amount includes the purchase of the district's current fleet (which creates a greater savings for the District as opposed to maintaining our fleet), plan coverage for the drivers and monitors currently being covered by the District, a manager, dispatcher/secretary and twenty (20) new buses.

Year	First Student
2012-13	\$1,811,040
2013-14	\$1,856,316
2014-15	\$1,902,723
2015-16	\$1,950,292
2016-17	\$1,999,049
Totals	\$9,519,420

Background:

As you know, at the October 12, 2011 Board Briefing, the Board of Education approved unanimously to award the transportation bid to First Student for three and a half years and authorized the Superintendent of Schools or his designee to begin contract negotiations.

The District was hesitant to move forward at that time due to the timing of the proposal, transition for all involved and the limited cost savings to the District. Since that time, we re-contacted First Student, met with them and requested a new proposal with a start date of July 1, 2012. Attached is the comparison from their August 2011 proposal to their February 2012 proposal.

So you are aware, expenses for the Transportation Department the past three years were/are \$2,162,586 (FY10), \$2,108,014 (FY11) and projected \$2,271,757 for FY 12. Additionally, by partnering with First Student, our worker's compensation liability will be reduced, on average, by \$100,092 annually. Worker's Compensation expenses for the past three years were/are \$85,280 (FY10), \$70,997 (FY11) and \$144,000 for FY 12.

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BOARD OF EDUCATION

Delana Spales-Allen, President • Mattie L. Thompson, Vice President • Alexis S. Thomas, Secretary • Glenda F. Richardson-Vaughn, Treasurer
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EXHIBIT 000237

Saginaw Public Schools - Projecting Proposal - Fleet Purchase

Projected District Cost of Operation					
Operating Costs	2011 - 2012	2012-13 Forecast	2013-14 Forecast	2014-15 Forecast	2014-15 Forecast
Projected Transportation Budget					
Rev 10-19-2011	\$2,274,757	\$2,328,551	\$2,386,765	\$2,445,434	\$2,570,285
Estimated Capital expense for new bus purchases*					
District Cost of Operation	\$2,274,757	\$2,328,551	\$2,386,765	\$2,445,434	\$2,570,285

Projected Cost of Operation with First Student									
Route Type	Routes	Days	12-13 Rates	12-13 Total	13-14 Rates	2013-14 Total	14-15 Rates	2014-15 Total	14-15 Rates
Regular/Special Needs Transportation									
AM/PM Routes	28	180	\$274.05	\$1,381,212	\$280.90	\$1,415,742	\$287.92	\$1,451,138	\$295.12
Daily PM Shuttles	17	180	\$24.00	\$73,440	\$24.60	\$75,276	\$25.22	\$77,158	\$25.85
Mid-Day Routes	11	180	\$24.00	\$47,520	\$24.60	\$48,708	\$25.22	\$49,926	\$25.85
Bus Monitors-AM/PM	20	180	\$47.79	\$172,054	\$48.59	\$176,356	\$50.21	\$180,765	\$51.47
Bus Monitors-Daily PM Shuttles	17	180	\$10.21	\$31,249	\$10.47	\$32,030	\$10.73	\$32,831	\$11.00
Bus Monitors-Mid-Day Routes	11	180	\$10.21	\$20,220	\$10.47	\$20,726	\$10.73	\$21,244	\$11.00
Extracurricular (assumes 3556 hours per year)	3,556		\$24.00	\$85,344	\$24.60	\$87,478	\$25.22	\$89,665	\$25.85
First Student Contracted Costs				\$1,811,040		\$1,856,316		\$1,902,723	

Operating Costs retained by District					
File	2011 - 2012	2012-13 Forecast	2013-14 Forecast	2014-15 Forecast	2014-15 Forecast
Common Carrier Cost	\$139,226	\$142,706	\$149,830	\$153,578	\$157,520
Amortization	\$278,808	\$286,803	\$293,973	\$303,856	\$316,577
Total Operating Costs retained by District	\$53,930	\$429,509	\$443,803	\$457,434	\$474,097

Total Operating Costs - District plus First Student	\$2,240,546	\$2,398,452	\$2,452,826	\$2,473,825	\$2,473,825
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Bus Purchase	\$245,357				\$245,357
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Net Annual Cost	\$1,995,191	\$2,153,095	\$2,152,825	\$2,152,825	\$2,152,825
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Operations Savings	\$333,360	\$340,303	\$347,458	\$354,765	\$362,126
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Savings					
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First Student, Inc.

Fleet Purchase

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Comparison of Proposals to Saginaw Public Schools

2/7/2012

	<u>August 2011</u>	<u>Current Proposal February 2012</u>
Purchase price for District fleet	\$167,040	\$245,357
Scholarship for graduating senior	N/A	\$10,000/year
New Buses	12 over 3.5 years	20 over 5 years
Partnership term	3.5 years	5 years
Healthcare for PT Employees	Net Premium 5	First Consumer*
	Minimal Coverage Plan	Chosen by district as most similar to current coverage
Year 1	\$1,836,782.36	\$1,811,040**
Year 2	\$1,881,084.55	\$1,856,316**
Year 3	\$1,926,366.67	\$1,902,723**
Year 4		\$1,950,292**
Year 5		\$1,999,049**

*We have included the cost of that plan coverage for the 17 drivers and monitors currently being covered by the District

**This is a reduction is 1.26% in cost to District and 2.14% reduction in cost to District including fleet purchase over 5 years,



**Saginaw Public Schools
Employee Meeting
School Bus Drivers and Monitors
May 17, 2012**

Welcome to First Student. As you know, First Student has been selected as the student transportation provider for the Saginaw Public Schools. We are looking forward to working with you to serve the community.

While this is a big change and we are certain you have questions about the transition, we know that many of you have transported students on these routes for several years, know the children, and are proud of the safe service you deliver. We also want you to be proud to work for First Student, and we are committed to communicating with you each step of the way.

Commonly Asked Questions:

Who are the First Student representatives that I may be seeing at our facilities?

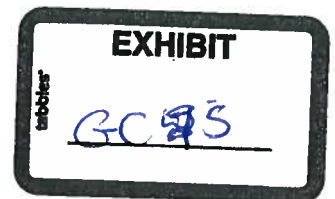
- John Kiraly, Location Manager
- Doug Meek, Area General Manager
- Bruce Laine, Region Safety Manager
- Mike Shanley, Region Maintenance Manager
- Rick Kellerman, Region Human Resources Manager
- Roger Moore, Senior Vice President
- Dan Kinsley, Business Development Manager
- Scott Mitchell, Region Finance Manager

Hiring Process:

What is the hiring procedure for positions with First Student?

All current Saginaw Public School drivers and monitors who successfully pass the company's hiring criteria will be offered an employment opportunity with First Student. You are not hired and officially considered an employee of First Student until you successfully meet and pass all the requirements listed below and are extended a formal job offer:

- Background checks
- Employment history checks
- Driving history review
- Criminal records checks
- Physical exam
- Drug test
- Physical Performance Dexterity Test (PPDT)
- Completion of training requirements and classroom and behind the wheel evaluations



Each current Saginaw Public School driver and monitor will participate in a brief interview with a member of the First Student management team. Interviews will be scheduled in the near future. **This will be a short 20 minute interview. Our team will put up a notification and will have**

a schedule where you can sign up. The team will ask about your general work experience as well as your work history with the Saginaw Public Schools.

We will provide each current employee with a packet containing pre-employment forms to be completed and returned by **12 noon on Wednesday, May 23, 2012**. If an employee does not submit an application by **12 noon on May 23, 2012**, he/she will not retain his/her seniority. All applications received after that date will be considered entry level for seniority and wage rates purposes.

Do I have to submit to a pre-employment physical and drug tests?

Yes, this is required by state and/or federal statute. First Student will pay for the cost of your pre-employment and/or re-certification physical at a First Student approved facility. All pre-employment, random, post accident/injury and reasonable suspicion substance testing is paid for by the company.

Pay Rates:

What will be my rate of pay?

All current school bus drivers and monitors who complete and return an employment application by the deadline of **12 noon on Wednesday, May 23, 2012** will be honored by maintaining your current rate of pay. This hourly rate will also apply for field trips and athletic trips.

A "B" hourly rate will apply for work performed for non-student transportation duties (i.e. attending training, employee or school meetings, clerical work, bus washing, etc.)

Do I have a pay guarantee?

Employees will be paid a guarantee of one and a half hours (1.5) for each AM and PM shift worked. Midday routes will be paid a minimum of one (1.0) hour. Employees will be paid actual time when working beyond the established guarantee times. Employees who work more than 40 hours per week will be paid overtime at a rate of time and a half (1½.)

Seniority:

What will be my seniority date?

First Student believes in honoring seniority from the Saginaw Public Schools. An individual hired outside of the existing Saginaw Public Schools workforce (drivers and monitors) will not be granted a higher seniority date for route bidding above transferring Saginaw employees.

All current employees that complete and return an application by the deadline of **12 noon on Wednesday, May 23, 2012** and are subsequently hired by First Student will retain their current route bidding position according to their Saginaw seniority date. You will also have a separate hire date for your First Student employment.

How will I select my work assignment?

We anticipate that bidding of routes will be done by utilizing your Saginaw Public Schools' seniority date. First Student hire dates will be used for brand new employees thereafter. Traditionally, we have dry run/mock school day practices follow the bid day where you will have the opportunity to familiarize yourself with the new route or re-acquaint yourself with a previous route.

Can current sub-drivers bid on routes?

Open positions will be posted and current employees, including subs, will be able to bid on those routes based upon seniority.

Can you explain how First Student does public charter work?

Our primary business is school transportation. As part of our overall business, we provide transportation services to the general public for activities such as sporting events, business functions and day-trips. When charters are available, interested drivers are offered this work by seniority then on a rotating basis.

Training:**Will I be required to complete a new training program?**

All First Student drivers and monitors must complete the company's required training program. Current drivers of Saginaw Public Schools who have their CDL with proper endorsements and are seeking employment with First Student, will be required to participate in First Student's orientation and classroom training as well as a behind-the-wheel evaluation.

Individuals seeking employment without previous school bus driving experience will receive more than 43 hours of training before transporting any students. This includes training on such topics as student behavioral management and bus safety. In addition to state and school district-mandated training, First Student also conducts periodic in-service meetings throughout the year to discuss various safety topics as well as review company policies and procedures. Drivers also must follow all state regulations and school district guidelines governing the operation of a school bus.

Will drivers and monitors be paid for any training?

Yes - current Saginaw Public Schools drivers who complete the First Student training program and are hired by the company will receive a bonus of \$150 (before taxes) in their first paycheck from First Student. Current Saginaw Public Schools monitors who complete the First Student training program and are hired by the company will receive a bonus of \$75 (before taxes) in their first paycheck from First Student.

How do I become a driver-trainer?

Openings for driver-trainers will be posted, and interviews will be conducted. Once selected, individuals will be mentored by a current First Student driver-trainer. Compensation is an additional 50 cents per hour when serving as a driver-trainer.

Benefits:**What medical, dental and vision benefits do I receive?**

All First Student driver and monitor positions are considered part-time. As such, the benefit programs for these positions are designed and tailored for a part-time workforce. The company offers medical, dental, and vision insurance plans to its employees for their purchase. Current drivers and monitors serving the Saginaw Public Schools who enroll in the medical insurance plan will receive a company-paid contribution of 80% towards employee-only coverage.

When do my insurance benefits take effect?

Insurance benefits will be effective October 1, 2012 for all drivers and monitors transferring from Saginaw Public Schools. Detailed benefit information and enrollment materials will be distributed in August 2012.

When does the company hold its annual benefit enrollment period?

The benefit year for First Student is October 1 through September 30. Therefore, any changes in benefit programs and costs are announced in August of each year for an October 1 effective date. The benefit open enrollment period begins in August at which time eligible employees receive packets of information and enrollment instructions for the new October 1 benefit plan year. Benefit enrollments and changes can be done either on-line or by telephone.

Other Benefits Available to First Student Employees**401 (K) Retirement Savings Plan:**

The 401(K) plan allows you to contribute toward your retirement on a before-tax basis. It is available to employees after 30 days of service. Any earnings on your contributions grow tax-deferred until you remove them from the plan. There is no company match for the 401K plan for part-time employees.

Direct Deposit:

First Student offers direct deposit of your payroll check. Forms will be made available to you for completion, and a voided check from your personal checking account is required for set-up.

Company Paid Life Insurance:

Drivers and monitors who are scheduled to work a minimum of 15 hours/5 days AM and PM per week will receive a company-paid life insurance policy in the amount of \$10,000. Voluntary life insurance and accidental death and dismemberment insurance are available at an additional cost to the employee.

Additional Work Opportunities:

There will be opportunities for drivers to bid on trips for other contracts and non-school district customers such as day care centers, churches, summer camps, etc. From time to time, employees will have the ability to assist other locations in the Michigan market when additional staffing is needed.

Career Opportunities/Vacancies:

First Student operates in 40 U.S. states and 9 Canadian provinces/territories. It is company policy to promote from within whenever possible and, as such, it is our policy to post all promotion opportunities at each of our locations for employee consideration.

Additional Communication / Questions:**How are disputes resolved?**

First Student has a Problem Solving Procedure that allows for an open culture and feedback to management. It is the intent of the Problem Solving Procedure to resolve disputes fairly based on company rules and regulations as well as industry practices. The complete process is outlined in the First Student Employee Handbook that will be provided and reviewed with you during the employee orientation process.

We will continue to communicate with you via mail, internal postings and on-site meetings. However, if you should have additional questions, please feel free to contact a representative from First Student:

- For human resources and benefit questions, please contact Rick Kellerman, Region Human Resources Manager, at 513-761-5136 or rick.kellerman@firstgroup.com.

- For policy and procedure questions, please contact Doug Meek, Area General Manager, at 330-328-2286 or doug.meek@firstgroup.com.
- For safety, training, and hiring questions, please contact Bruce Laine, Region Safety Manager, at 262-797-7688 or bruce.laine@firstgroup.com.

You can receive additional information about First Student through our information hotline at 1-800-844-5588 or on the company's website at www.firstgroupamerica.com.

At First Student, the safety and security of the four million students we transport to and from school each day is our core value, and we are looking forward to working with you to serve the Saginaw Public School District. We are proud to be a part of the district and look forward to many safe and successful school years to come.

First  **Student**

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National **Employee** Handbook

July 2011



EXHIBIT

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A FirstGroup America Company

Amended, July 2011

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Our Values



- Safety is our core value and is considered first in everything we do
- All of our employees, customers and business partners will be treated with dignity and respect
- We will deliver on our promise of reliability to our customers
- We will operate in a socially responsible manner, showing care for our environment and communities
- We will never compromise on our values in any of our dealings with customers, suppliers or employees

July 1, 2011

On behalf of First Student, I welcome you to our company! We are proud of First Student as the leading provider of passenger transportation services in the United States.

First Student, a FirstGroup America company, enjoys a unique history of more than 50 years in the passenger transportation industry, serving public agencies and private businesses, operating in nearly all states and several US possessions. We are confident that every employee who has chosen to work for us will experience a company committed to excellence in service to our customers, and that puts safety at the core of every aspect of our business.

Whatever your position in the Company — Driver, Attendants, Technician, Supervisor, or Manager — you are an integral part of the First Student team and an important contributor to our Company's overall success. As part of a company that places the utmost value on safety, each employee will personally perform to help deliver safe, reliable service to our student passengers.

We owe that to each other, as well as the public we serve. Remember, at work and away, "if you cannot do it Safely, don't do it." First Student seeks to be an employer of choice, offering a work environment that demonstrates each day the company's Core Values of Safety, Respect, Integrity, Responsibility, and Reliability. Stating our Core Values is not enough; each and every First Student employee should strive to express these values in all of their daily actions and decisions.

The Employee Handbook that follows presents our policies and the guidance necessary for you to know and understand First Student's expectations of its employees in their day-to-day work life, and in their private life to the extent it may reflect or bear on the Company's business interests. Each of us, together and individually, must endeavor to work toward these expectations to be a successful contributor to our team, and to support our Core Values.

You should carefully review the Handbook. Bring forward any questions, ideas or suggestions you may have about the Handbook or other Company policy or practice to your manager.

Thank you for being part of First Student!

Sincerely,



Linda Burtwistle, President

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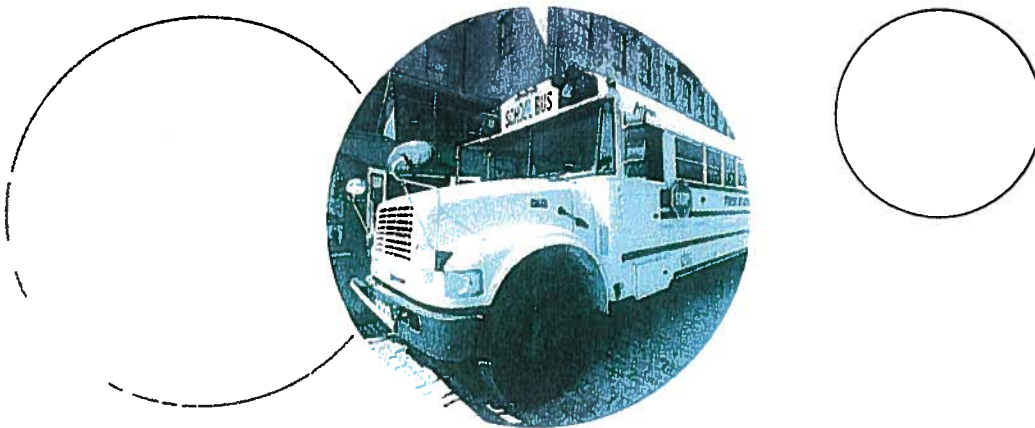
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Notices and Limitations

- The First Student Employee Handbook (Handbook) is not intended to be an employment contract or agreement, nor does it contain promises or commitments of any kind to employees. The contents should not be construed otherwise. Any references to, or discussion of, matters related to employment shall not be treated as a contractual agreement or guarantee of employment.
- The employment relationship established with the Company is terminable at will (except for employees covered by a Collective Bargaining Agreement), by either the employee or the Company, at any time, for any reason, with or without cause. Therefore, the contents of this Handbook shall not be construed as creating a right to employment for any specific period of time.
- This Handbook applies to employees represented by a labor union, only to the extent that the Handbook's provisions are not in conflict with a specific term or condition stated in the Collective Bargaining Agreement (CBA). To the extent that the Handbook is in conflict with a term or condition of the employee's applicable CBA, the provision in the CBA shall take precedence.
- Where provisions in this Handbook are in conflict with State or local statutes, the State or local laws prevail.
- The Company reserves the right to change any of the policies or procedures in this Handbook at any time at its sole discretion without notice.
- Our failure to adhere to any provision of this Handbook does not create rights nor constitute a waiver.
- No person is authorized to make oral exceptions to this Handbook and written exceptions are permitted only when signed by the President of First Student.

Section 1

Introduction



A. Welcome to First Student

The First Student National Employee Handbook establishes standards for employment, operating efficiently, and delivering world class safety and customer service. This is your personal copy. These First Student policies, practices and regulations should assist all employees in their day-to-day relationships with the public and the Company.

Its goal is to make First Student employees aware of the nature and scope of their responsibilities as a student transportation provider, thereby creating a better understanding and working relationship between drivers, attendants, supervisors, school officials, and student passengers.

Each employee is responsible for learning and understanding the rules, consequences and discipline outlined in this handbook. This is a living document and your input is sought and desired. Please utilize the problem solving guidelines in this handbook to offer suggestions. From time to time changes will be made based on changing circumstances, in addition to employee input. Please feel free to bring any concern to management's attention.

Whenever an employee has been off duty for any reason, it is the employee's responsibility to contact the location supervisor and review the bulletin board for any special instructions or changes prior to returning to duty. This will ensure the employee will be able to follow any new policy, practice or regulation that is in effect.

Your commitment to safety, efficiency, economy, and demonstration of a positive image are essential to maintain the highest quality standards of First Student. We are pleased that you have joined our team and invite you to share and help further our professional approach to student transportation.

Welcome to First Student!

B. Company Policies and the First Student National Employee Handbook

This Handbook is designed to acquaint you with First Student and provide you with information about working conditions and policies and procedures affecting your employment. You must read, understand, and comply with all provisions of the handbook. It describes many of your responsibilities as an employee and outlines the Company's policies and procedures.

No employee handbook or policy can cover every circumstance or situation. As First Student continues to grow, the need may arise, and First Student reserves the right, from time to time, to revise or modify any of its policies, including any policy set forth in this handbook.

C. First Student Safety Policy

First Student, Inc. and its subsidiaries and affiliates will not perform any service, transport or use a product, unless it can be done safely.

First Student, Inc. and its subsidiaries and affiliates require all employees to perform their duties safely and with concern for the safety of our passengers and other employees. Management is committed to providing a safe workplace, the proper training, protective equipment, and a work environment conducive to safe practices and policies.

Management believes that working safely promotes quality, productivity and profitability. Prevention of collisions and personal injuries is of critical importance to the individual and his/her family. The Company is committed to on-going safety processes to help employees work safely at all times.

Safety protects our most important asset.... our people.

D. Drug and Alcohol Policy

First Student supports a policy of a drug-free workforce and does not tolerate any violation of our Drug & Alcohol policy. The First Student Drug & Alcohol Policy (Policy) has been prepared, published, and distributed to all employees and contains the complete details of the First Student drug and alcohol programs, including federally required testing and compliance. The Policy, as mentioned briefly here, has been provided to each employee and is incorporated into the Employee Handbook by reference. A copy of the Policy is available at every Company location, and from any supervisor or manager in the Company.

The purpose of this Policy is to assure employee fitness for duty and to protect First Student employees, customers, and the public from the safety and health risks posed by the misuse of alcohol and the illegal use of drugs. Any violation of the Policy may

result in further disciplinary action, up to and including discharge for a first offense. Illegal use of drugs includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. The "use" of drugs means presence in an employee's body system while on duty. A positive test is sufficient to support a finding of "use."

Please refer to First Student's Drug and Alcohol Policy in its entirety for a complete understanding of the program. If you or location management have additional questions about the Drug and Alcohol Policy, contact your National Drug and Alcohol Program Administrator at 1.513.419.8736.

F. First Injury Prevention Principles

The First Injury Prevention Principles provide the basic truths or fundamental laws about working safely in our workplace and on our school buses. The First Injury Prevention Principles are designed to work with the Injury Prevention Program (Injury Prevention) explained below in section F. The Injury Prevention Handbook issued to all employees contains a copy of the First Injury Prevention Principles.

All First Student employees are expected to adopt these principles and put them into practice at all times, so together we may create a safe work environment free from injury to ourselves, our co-workers and our passengers.

The motto for the First Injury Prevention Principles is:

"If you cannot do it safely, don't do it."

This motto is your instruction to work safely at all times.

If you feel you cannot perform a task safely, do not perform the task. Stop and immediately advise your manager of issues preventing you from working safely and what is required to ensure your safety.

Listed below are the injury prevention principles.

1. Perform all safety checks and risk assess before you undertake any work.

Speak to your supervisor or manager before you start work if you are unsure.

2. Do not endanger yourself or others.

Report any hazardous condition or practice that may cause injury to people, property, or the environment.

3. Obey all rules, signs and instructions.

If you do not understand, speak to your manager before you start work.

4. Keep your work area clean and tidy.

Disorder causes injuries, wastes time, energy and materials.

5. Wear protective clothing and equipment as required.

Keep it in good condition, wear it correctly and ask for a replacement if it becomes damaged or unfit for use.

6. Use only the correct tools and equipment for the job.

Check that they are in good condition before use and use them safely.

7. Do not adjust, modify or repair any piece of work equipment unless you are competent and authorized to do so.**8. Before lifting, assess the load and your capability to move it.**

Make sure you get help with any heavy or awkward items, and follow approved techniques.

9. All injuries, incidents and near misses must be reported to your manager.

Seek immediate help and first aid (if necessary)

10. If you have any suggestions to improve safety in your workplace, tell your supervisor or manager.

Note: Protect your own safety and the safety of those around you by following these injury prevention principles at all times.

Injury Prevention

The main purpose of Injury Prevention is to reduce collisions and injuries by increasing the communications between employees and supervisors about safety. As part of the Injury Prevention process you are encouraged to initiate reports of any near miss, route and security hazards or any unsafe condition. When you make a report to your supervisor about a safety or security concern, your supervisor will investigate the concern and follow-up with you regarding the resolution of the report. The Company will not retaliate against or impose any other form of retribution on any employee as a result of his or her good faith reporting of a safety issue/concern, another person's suspected violation of Company policies or guidelines, or any alleged violations of federal, state or local laws.

Our supervisors will be initiating safety conversations with employees about their observations of both safe and unsafe practices. A quality conversation about safety benefits all parties and will lead to safer operations for our employees and passengers. All employees will receive training on the Injury Prevention as part of their employee orientation training.

As part of the Injury Prevention process each employee will be issued an Injury Prevention handbook which must be carried by them at all times while they are on duty. The handbook must be carried in either the clear plastic pouch with the safety lanyard and worn around the neck or inserted in the clear plastic pocket on the new style safety vests.

The Injury Prevention handbook contains a "Safety Contact" pad which is for use by both the employee and manager. The employee will use the pad for documenting and reporting safety, route and security concerns. If an employee is involved in a near miss

or a "close call" we are asking for their help in reporting the event so we all may learn the lessons from it and perhaps prevent a collision or injury from occurring.

When an employee observes an item on their route which in their opinion creates a safety or security hazard we are asking for their help in documenting it on the safety contact form in the Injury Prevention Handbook and bringing it to their supervisor to discuss.

After discussing the concern with the employee, the supervisor will evaluate the report and decide what actions may be necessary. If follow-up actions are necessary, the supervisor will inform the employee what actions are being taken and will report the results of follow-up actions to the employee when completed.

The employee's "Safety Contact" pad will also be utilized by the manager for recording any supervisor observations of safe or unsafe practices and summarizing the results of the safety conversation.

The handbook also contains an Identification Badge (ID) on the back cover. This ID badge will contain the employee photograph and other identifying information; it may not be altered or modified in any way. This ID badge is for use by the employee for "official" company business while on duty. It may not be used for any other purpose. The ID is contained on the back cover of the handbook; while on duty please display the back cover of the handbook with the ID badge on it.

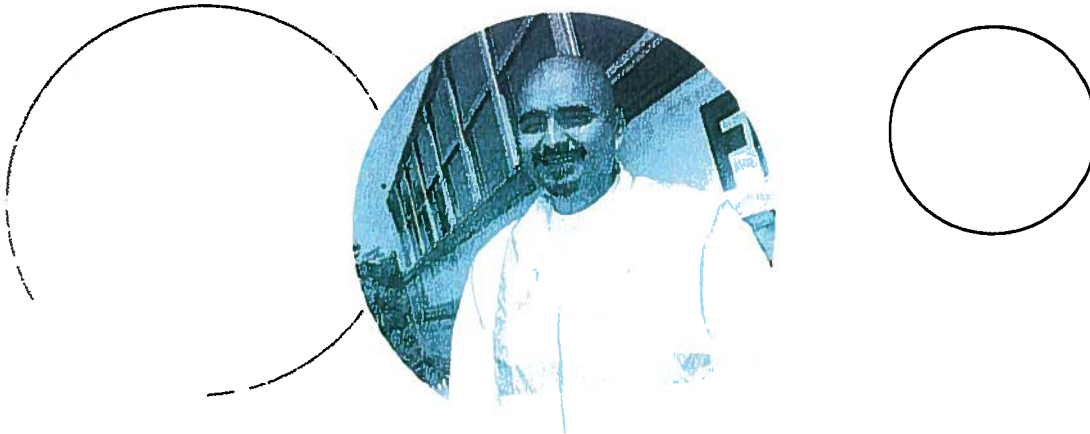
The Injury Prevention handbook also provides a quick reference for the employee on:

- First Injury Prevention Principles
- Collision Response
- Security Response
- Security Emergency Radio Codes

These procedures provide abbreviated emergency guidance for employees in the field on how to respond to these occurrences.

Section 2

The First Student Difference



For over 50 years, First Student has provided safe solutions to transportation challenges. Today First Student uses this experience to manage and maintain safe, reliable and cost effective student transportation systems. First Student companies provide student transportation services to localities throughout North America.

Every industry has one company that stands out as the leader in its field, a company that is acknowledged universally as “number one” in its business. In each case, there is a reason: corporate characteristics that distinguish a company and make it succeed.

For First Student these characteristics are people, a commitment to Safety Excellence, quality, leadership, growth, and financial strength.

These are the attributes that make The First Student Difference.

A. Preferred Employer

First Student wants to be, and we feel we are a “Preferred Employer”. A Preferred Employer is an employer that attracts and retains quality employees. People choose to work for First Student and stay with First Student because of our commitment and efforts to have:

- competitive wages and benefits
- safe and pleasant working environments
- safe and dependable equipment

and a management team that:

- is committed to safety excellence
- treats employees with respect and dignity

- provides clear expectations and training
- treats employees fairly and consistently
- keeps an "open door", allows for "redress" of issues and holds "town hall meetings"
- encourages team spirit through involvement
- listens to employees' concerns, and researches and responds in a timely manner;
- and values all employees as professionals and business partners

**IN SUMMARY:
FIRST STUDENT CARES ABOUT YOU –
ON AND OFF THE JOB!!!**

B. Freedom of Association (FOA) Policy

Purpose: First Student aspires to be a preferred employer in our industry. To that end, the company supports human rights and the individual rights of its employees, including an employee's right to associate themselves with a labor union if they so choose.

Rights: Though not an exhaustive list, management at First Student supports an employee's right to:

1. Freedom of Association
2. A secret ballot election
3. An informed choice
4. A representative voter turnout

Objective: To manage our business in support of our employees and the above rights and to refrain from management conduct, whether written or verbal, which is intended to influence an employee's view or choice with regard to labor union representation. In particular, during union organizing campaigns, management shall support the employee's individual right to choose whether to vote for or against union representation without influence or interference from management.

Policy Statement: Management shall not act in any way which is or could reasonably be perceived to be anti-union. This includes refraining from making derisive comments about unions, publishing or posting pamphlets, fliers, letters, posters or any other communication which should be interpreted as criticism of the union or advises employees to vote "no" against the union. However, we believe that employees should be able to make an informed choice and therefore management may provide balanced factual information to assist its employees in making that choice. Further guidance as to what is and is not acceptable can be given by your Human Resources Department.

Intimidation or harassment of employees or any other unlawful activity is strictly prohibited. By extension of this policy, management is reminded of its obligation to honor the principles set out in the FirstGroup CSR policy, including the Code of Business Ethics.

For any employee who feels that this policy has been violated and wishes to file a complaint, please complete a Complaint Form, which can be obtained from your local management or corporate Human Resources, and send it by one of the methods noted below:

Via U.S. Mail to:

FirstGroup America
Attn: Patty Jackson
600 Vine Street, Suite 1400
Cincinnati, OH 45202

or by fax to:

513-672-0225

or by email to:

foaupdate@firstgroup.com

For reference, submitting a Complaint form does not affect an employee's right to file a complaint with the National Labor Relations Board or any other public agency.

Management Obligations: If you are a location manager and you become aware of union organizing activity at your facility, please notify the Vice President of your region and corporate Human Resources who will support you during such activities and who will be responsible for coordinating company communications during such activity to ensure compliance with this policy.

If you already manage a union site, this does not alter your duties in collective bargaining and acting in the best interests of the company and our employees.

Q. First Student Principles

FIRST STUDENT WILL:

- * Treat you as a professional and provide a climate of trust, respect, integrity and honesty.
- * Ensure a safe working environment through a commitment to safety excellence, the development and implementation of safety processes, driver and attendant training, and safely-maintained equipment & facilities.
- * Encourage two-way communication between you and management.
- * Communicate the standards of your job and the requirements of our customers.
- * Provide you with fair and competitive compensation based on performance.
- * Provide you with training to perform your job safely and effectively.

- * Recognize your need to maintain a balance of work, family, community and personal activities.
- * Treat you as a valuable member of the First Student team.

AS PROFESSIONALS, FIRST STUDENT EMPLOYEES WILL:

- * Make safety their first and foremost concern in everything they do and remember to always adhere to "If you cannot do it safely, don't do it."
- * Represent First Student in a professional, courteous and respectful manner to the customer, the general public and the transportation industry at all times.
- * Maintain the highest regard for safety.
- * Provide our customers with consistent, high-quality service.
- * Meet or exceed job standards and customer requirements.
- * Maintain the highest standards of ethical and legal conduct and to encourage others in the student transportation profession to do the same.
- * Properly care for all equipment.
- * Take an active role in communicating ideas, issues, and suggestions to management.
- * Be a valuable member of the First Student team.

D. Our Commitment to an Open Door Policy

First Student believes the way to serve our customers is by developing safe, caring and efficient relationships. Even so, we may frequently find better and safer ways of doing things and are always alert to possible improvements. You can help. If you have ideas or suggestions that will improve operations or safety practices and that will make our location a better or safer place to work, please mention them. Your ideas are welcome. They will be given prompt consideration.

If you have problems that could be solved or eased by talking with someone about them, feel free to discuss it, in confidence, with your supervisor, Location Manager, or Area General Manager. We stand ready to listen, and will provide you with contact information for resources that may be able to assist you with your problem. Even if you have a personal problem that is not affecting your work, we still stand ready to listen and to provide you with contact information for resources that may be able to assist you.

E. Town Hall Meetings

“Town Hall” meetings are an extension of First Student’s Open Door Policy. These meetings are designed to give employees a chance to meet, as a group, with their management team to discuss work related topics that affect more than one employee.

Employees wishing to discuss a problem, question, comment or issue are encouraged to use the Open Door Policy and meet with their manager (or appropriate designee) one on one.

The purpose of either meeting is the same - as a Preferred Employer we want to listen to employees about work related ideas and concerns.

Town Hall meetings are employee meetings. They may be initiated by either the employees or management. Attendance is voluntary, and is non-paid. The meeting date and time will be posted. Employees may provide topics for the agenda to their supervisor. They should be submitted in writing 24 hours in advance of the meeting. An agenda will be posted and topics will be discussed in order, and the meeting will last approximately one hour. Every employee is welcome to attend and participate even if they did not contribute to the agenda; and can stay as little as or as long as they wish.

The manager’s responsibility is to provide a time and place for such meetings, listen to the comments made, ask questions to clarify the issue or comment, investigate the information gathered, and then respond to the entire workforce – in writing and in a timely manner. A log of agenda items, issues/comments and responses will be kept in the driver’s room.

Town Hall meetings will be scheduled periodically. Open Door meetings are held as needed.

F. Problem Solving

When people work together in an organization, misunderstandings, mistakes, complaints about conditions, and questions about policies and practices sometimes give rise to employee dissatisfactions. Some may seem important, some unimportant; however, in all cases, we would like to have the opportunity to seek out the most fair and equitable solution; but we can only do so if we are aware a situation exists. So, if you have complaints, tell us about them. It will help both you and us in the long run. You can discuss them professionally and frankly, without fear.

If you have concerns about safety, security, fraud, or theft, and you don’t feel they are being addressed, you may call First’s confidential toll-free number at 1-877-3CALLFG, or you may email confidential@firststudent.com.

G. Employee Participation and Involvement

First Student values all employees as professionals and encourages them to participate in our safety process and selected operational processes.

Participation in the safety process is the key to creating a safe work environment free from injury and collisions. The Injury Prevention handbook process provides a direct means for employees to be safety leaders and to participate in the safety process by reporting of route hazards, near misses, safety and security concerns. All employees must carry their Injury Prevention handbook with them at all times during the work day. The handbook contains a safety contact pad which is to be completed to report any of these events. Then completed safety contact is then taken to the Location Manager or Supervisor and a safety conversation takes place. All employees are encouraged to be active participants in required safety meetings, by asking questions and actively listening. Of course, if you have a safety concern which warrants immediate attention, please report this to your supervisor without delay.

Employee involvement in operations could range from ideas shared one on one, in an Open Door meeting / Town Hall meeting / suggestion box, to serving on an employee committee.

Whenever a committee or group is formed, written eligibility criteria, tasks / expectations and sign up information are posted. Volunteers will be randomly selected to serve if the number of volunteers exceeds the number of volunteers needed.

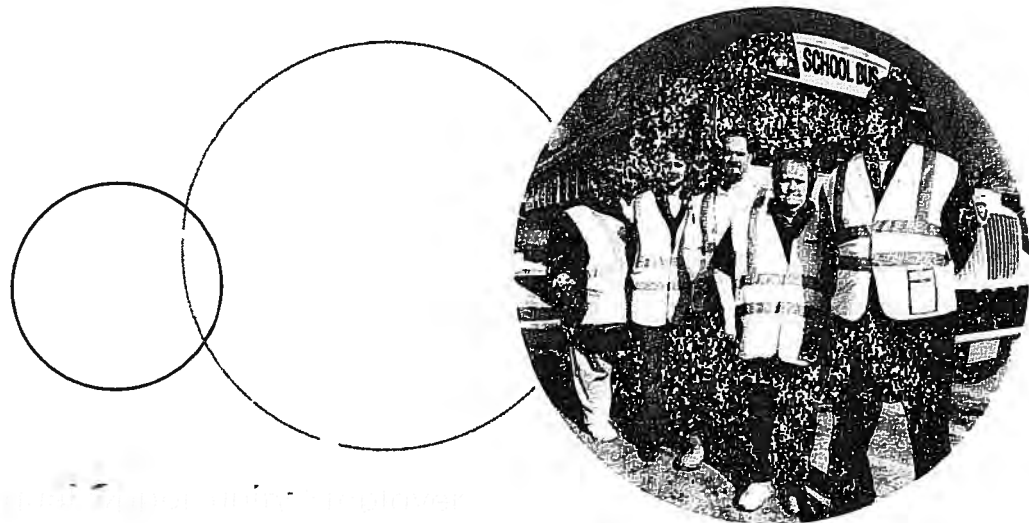
H. Career Pathing

All local open permanent positions will be posted. The posting will include a job title and description, job requirements/qualifications, information on who to contact (and how) and deadlines for applying. Temporary, ad-hoc positions will not be posted.

Whenever possible, First Student jobs will be filled by current First Student employees who meet all of the job requirements and are the best candidate for the positions.

Section 3

Employment Practices



First Student is committed to providing a work environment that fosters diversity and equal employment opportunity. First Student strongly believes in creating opportunity based solely on merit, qualifications, skills, potential and competence. Candidates are selected for hire, promotion, advancement, or other opportunities without regard to race, color, religion, gender, pregnancy or related condition, national origin, ancestry, age, marital status, physical or mental handicap or disability, medical condition (except where physical ability is a bona fide occupational qualification), military or veteran status, citizenship status, actual or perceived sexual orientation, gender identity, or any other consideration made unlawful by federal, state or local laws.

First Student's commitment to providing equal employment opportunity applies to every employee and prohibits unlawful discrimination by anyone, including managers, officers and co-workers. All employees are expected to treat one another with the same courtesy and respect as one would like to receive from others such that all employees can enjoy work, free of harassment, intimidation, and discrimination. In addition to hiring, all other terms and conditions of employment must be administered without unlawful discrimination, including without limitations, promotions, salary increases, benefits and on-the-job training. Any employee who believes this policy is not being properly implemented should contact the Human Resources Department or email hotline@firstgroup.com or call the hotline number at 1-877-3CALLFG.

B. Harassment Free Workplace

General Policy Against Harassment

First Student is committed to providing a work environment free of harassment.

Harassment because of race, color, sex, pregnancy, religion, marital status, age, national origin, ancestry, sexual orientation, gender identity, medical condition, disability or any other basis made unlawful by state or federal law is strictly prohibited and will not be tolerated. The Company strongly disapproves of and will not tolerate harassment. First Student's anti-harassment policy applies to all persons involved in the operation of the Company and prohibits unlawful harassment by any employee of the Company, including supervisors and co-workers, as well as by any person doing business with or for First Student. Unlawful harassment does not require the loss of some tangible economic benefit, but includes unlawful behavior that creates a hostile, intimidating or offensive work environment.

Sexual Harassment Defined

For purposes of this policy, sexual harassment is defined to include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- submission to such conduct is either explicitly or implicitly made a term or condition of an individual's employment;
- submission to or rejection of such conduct is used as the basis for employment decisions affecting the individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile or offensive working environment.

Some examples of what may constitute sexual harassment may include: threatening to take or taking employment actions, such as discharge, demotion or reassignment, if sexual favors are not granted; demands for sexual favors in exchange for favorable or preferential treatment; unwelcome or repeated flirtations; propositions or advances; unwelcome physical contact; whistling; leering; improper gestures; use of stereotypes; offensive, insulting, derogatory or degrading remarks; unwelcome comments about appearance or gender; sexual jokes or use of sexually explicit or offensive language; gender- or sex-based pranks; and the display in the workplace of sexually suggestive objects or pictures.

The above list of examples is not intended to be all-inclusive. Care should also be taken in informal business situations, including Company parties and business trips.

The Company prohibits such conduct, even if the conduct is not sufficiently severe or pervasive to constitute unlawful harassment.

Any employee who is determined to have engaged in conduct prohibited by this policy or other inappropriate conduct, even if it does not rise to the level of prohibited harassment, will be subject to disciplinary action, up to and including termination. Employees should note that they may be held personally liable for any acts of harassment.

Other Types of Harassment Defined

For purposes of this policy, other harassment includes unlawful harassment on the basis of race, color, religion, sex, national origin, ancestry, citizenship, age, gender, physical or mental disability, marital status, sexual orientation, medical condition, pregnancy, covered-veteran status or any other basis protected by federal, state or

local law. Unlawful harassment in employment may take many different forms. Examples include, but are not limited to:

- **Verbal conduct** such as epithets, derogatory comments, slurs or unwanted comments and jokes;
- **Visual conduct** such as derogatory posters, cartoons, drawings or gestures;
- **Physical conduct** such as assault, blocking normal movement, restraint, touching or other physical interference with work directed at an individual; or
- **Threats and demands** to submit to certain non-work-related conduct or perform certain non-work-related actions in order to keep or get a job, to avoid some other loss, or as a condition of job benefits, security or promotion.

First Student prohibits such conduct, even if the conduct is not sufficiently severe or pervasive to constitute unlawful harassment.

Any employee who is determined to have engaged in conduct prohibited by this policy or other inappropriate conduct, even if it does not rise to the level of prohibited harassment, will be subject to disciplinary action, up to and including termination. Employees should note that they may be held personally liable for any acts of harassment.

Preventing Harassment

Preventing harassment and other offensive conduct requires increased awareness by everyone of the impact their conduct might have on others. Employees should be sensitive to cultural differences that may exist in the workplace. What one employee thinks is proper conduct might be viewed as inappropriate by another. It is no excuse that the alleged offender “meant no harm” or “was just kidding.”

G. Policy Against Retaliation

It is a policy of First Student to fully support any employee who pursues any of the complaint procedures set forth below. Retaliation for complaining about discrimination or harassment, or for providing information relating to such complaints, is strictly prohibited and will not be tolerated, regardless of the outcome of the complaint. In other words, employees are protected for speaking up in good faith if they believe discrimination or harassment has taken place, and from providing information related to such complaints, even if the complaint is ultimately not substantiated. Any supervisor, manager, or co-worker who retaliates against a complaining employee or anyone involved in an investigation of a complaint will be subject to discipline and/or discharge.

Some examples of what may constitute retaliation may include: denial of promotion, refusal to hire, denial of job benefits, demotion, suspension, discharge, negative evaluations, reprimands and harassment. The above list of examples is not intended to be all-inclusive.

Any form of retaliation for speaking up about perceived bias, harassment or discrimination, or retaliation for providing information related to any investigation into such matters, is a separate violation of the Company's Unlawful Harassment Policy and the Company

strictly prohibits such conduct. If you believe that you have been subjected to retaliation by a co-worker, supervisor or manager, you are entitled to pursue a complaint under the Company's Complaint Procedure.

D. Reporting Procedure

Company's Complaint Procedures

Any employee who believes that they have been subjected to or witnessed any kind of harassment, coercion or intimidation by anyone, whether by a co-employee, a client or vendor, or a member of our management, is encouraged to file a written or verbal complaint with either their supervisor or Location Manager. However, employees may also directly file a written or verbal complaint with Region Human Resources, Vice President of Human Resources at 513-419-3253, the Director of Compliance and Employee Relations at 513-419-8636 or by email to hotline@firstgroup.com, or by calling the hotline number at 1-877-3CALLFG.

Any Supervisor or Location Manager who receives either a verbal or written formal or informal complaint will notify the Human Resources department within 24 hours of receipt of the complaint. All complaints of harassment will be thoroughly and objectively investigated. The investigation may include interviews of individuals believed to have information regarding the alleged harassment. Such complaints or investigations will remain strictly confidential to the extent possible. However, the Company may need to disclose certain information in connection with the investigation and corrective measures taken.

The results of the investigation and any remedial action taken will be promptly communicated to the complaining employee in writing, and will also be communicated to the alleged harasser and, if appropriate, to others directly concerned. If the investigation reveals that a violation of the Company's antiharassment or anti-retaliation policy or other inappropriate conduct has occurred, then the Company will take immediate corrective action, including discipline up to and including termination, as is appropriate under the circumstances, regardless of the job position of the parties involved. The Company may discipline an employee for any inappropriate conduct discovered in the investigation of reports of harassment, discrimination or retaliation regardless of whether the conduct amounts to a violation of law. If the person who engaged in the harassment or retaliation is not employed by the Company, then the Company will take whatever corrective action is reasonable and appropriate under the circumstances.

Measures will be undertaken to protect those who use the complaint procedure from any further acts of harassment, coercion or intimidation, and from retaliation due to their reporting an incident of this type or participating in an investigation or proceeding concerning the alleged harassment.

It is the obligation of all employees to cooperate fully in the investigation process. In addition, disciplinary action will be taken against any employee(s) who attempt to discourage or prevent any harassment victim from using the Company's complaint procedure to report harassing conduct.

E. Family and Medical Leave Act (FMLA)

The federal Family and Medical Leave Act of 1993 and the 2008 Military Family Leave addendum allow employees to take an unpaid leave from their job for special family situations. FMLA leave runs concurrently with an employee's time off from work due to qualifying personal illness or injury and Personal or Medical Leave of Absence including injury on the job.

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave per rolling 12-month period to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth.
- To care for the employee's child after birth, or placement for adoption or foster care.
- To care for the employee's spouse son or daughter or for a child where the employee stands **in loco parentis**, or parent or a person who stood **in loco parentis** to the employee, who has a serious health condition.
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies.

Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings. FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service member during a single 12-month period. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA.
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

To obtain forms to request FMLA or for more information about FMLA or other State Laws regarding Leave of Absence, refer to the information posted on your location's bulletin board, ask your manager, or contact your Region Human Resources.

F. Maternity/Paternity Leave

Maternity and Paternity leaves are included under the Family and Medical Leave Act (FMLA). Absence for Maternity will be approved using the same procedures as other medical leaves of absence. The employee may elect to use available vacation during Maternity / Paternity Leave. The employee may elect to take the maximum FMLA leave of 12 weeks, including available Short Term Disability (STD) or any other paid leave. State laws, where they exist, may provide longer leave than FMLA for Maternity-related leave and take precedence over FMLA.

In Maternity and Paternity leave situations where both a husband and wife work for the Company, the FMLA leave entitlement is limited to a combined total of 12 weeks of FMLA leave during any 12-month period when the leave is for birth, adoption, or foster care placement of a child, or care for the child following birth, adoption, or foster care placement.

G. Military Leave

First Student recognizes that employees who are members of a military reserve unit may need to attend annual training or to report for active duty.

Any employee called to active duty for 30 calendar days or less by the military reserves or the National Guard will be granted time off for the duration of the active duty. Employees who are members of a military reserve unit may attend annual training sessions, with a maximum of two weeks of paid leave allowed during a 12-month period. Any employee called to active duty longer than 30 calendar days by the military reserves or the National Guard will be granted time off for the duration of the active duty, for a maximum of five years.

Health Insurance for military service for 30 calendar days or less is provided as if the employee had remained employed. For military service more than 30 calendar days, employees may elect COBRA/USERRA coverage for up to 24 months. Employees who do not elect to continue coverage during military service can be reinstated into the health plan when reemployed by contacting the benefits administrator within 30 days of return.

H. Leave of Absence without Pay

First Student may grant a Personal Leave of Absence, due to extenuating circumstances, to full-time and part-time employees who have completed at least six months of continuous employment. A Personal Leave of Absence is defined as a 30 calendar day period, agreed upon and approved by the Company. First Student may also grant a non-FMLA Medical Leave of Absence to full-time and part-time employees who have completed at least 90 days of continuous employment. A Medical Leave of Absence is defined as a 30 calendar-day period (inclusive of FMLA), renewable in 30 calendar day increments up to six months, appropriately substantiated, and approved by the Company.

In either case, the employee is removed from payroll, but maintained as an employee for the duration of the leave.

Applies to sub-sections E, F, G & H: Failure to return from a leave on the date approved and scheduled for return to work can be subject to further disciplinary action, up to and including termination.

I. No Solicitation

Solicitation for any purpose is not permitted in the work place while on paid work time.

Work hours do not include free time such as breaks, lunch periods or before and after scheduled work hours.

Employees may not distribute literature or other printed matter at any time in company work areas, nor may any person not employed by the company distribute literature on company property.

Employees who interfere with their work or the work of other employees by soliciting as defined in this policy will be subject to disciplinary action, up to and including termination.

J. Parking

First Student shall not be liable for any damages to personal vehicles at the workplace that may be caused by another party.

K. Personal Safety

We care about you and your personal safety, and will do everything possible to provide you with a safe work environment. If you are injured in the course of your work, you should report immediately to your supervisor for first aid treatment, but, no later than 24 hours, no matter how slight the injury. If your injury is of a serious nature and requires further attention, you will be taken to the nearest qualified treatment center. Our claims administrator can only make payment of personal injury insurance after acceptance and approval of your claim.

Every employee will have personal protective equipment (PPE) and safe work methods required for certain tasks in his/her job. It is the responsibility of the employee to use that equipment and follow the safe work methods as instructed. Failure to do so may lead to injury for the employee and/or others. It is a violation of Company policy to not use the equipment provided.

Any employee, vendor and visitor on Company property shall wear the company-issued "reflective safety vest" or high-visibility clothing when walking on company property outside of our buildings. Where designated pedestrian walkways are marked, they should be utilized at all times when walking in our bus yards. Only Authorized Employees are allowed in a First Student maintenance shop. When required to enter, all other employees and persons will remain behind the yellow lines in the safe area and will leave immediately when asked by a shop employee or supervisor or manager.

SAFETY IS A BEHAVIOR, not a thought. Each employee is responsible for his/her own safety and that of others around him/her. No employee is exempt from the company's Injury Prevention Principles and safe work rules. As an employee of First Student you are expected to tell others when you see them not using protective equipment and/or not following a safe work method. A safe workplace requires ALL employees cooperation and acceptance of responsibility.

RIGHT-TO-KNOW: EMPLOYEES

The Occupational Safety and Health Administration (OSHA) requires that all employers advise their employees, through written communications and formal training, of:

- * potentially hazardous materials within the work site;
- * precautionary measures which must be taken to avoid a chemical release into the environment and employee exposure to that release in the event it occurs; and
- * proper, safe methods of spill control and clean up.

Each employee has a right to know...

- * of any operations in his/her work area where toxic or hazardous chemicals are present.
- * these details about hazardous materials in his/her work area:

- which one(s) he/she may handle
- where to find information about the materials
- how to safely handle those materials
- how to react in case of an uncontrolled release of those materials
- * how to protect yourself from hazardous materials in all situations within the location

Your location must...

- * have a written hazard communications program that describes how the HCP will be implemented
- * conduct training of all employees so they will know about hazardous materials in their work areas
- * ensure that all hazardous material containers (both primary {manufactured} and secondary {miscellaneous buckets/containers} are properly labeled

Each new employee must receive initial training prior to having any access to the area in which hazardous materials are utilized.

J. No Smoking Policy

First Student is a smoke free workplace.

Smoking is not permitted in any First Student facility or on any First Student vehicle. This includes the office, employee lounge, restrooms, hallways, and shop area. Those employees who wish to smoke must do so outside the building in the designated area. Additionally, smoking is not permitted on school property. There is NO smoking within 50 feet of the fuel island. This policy applies to all employees, visitors, vendors and staff.

K. Return to Work

First Student maintains a commitment that employees injured on the job receive prompt quality medical care and return to work in a productive transitional duty capacity as quickly as they are medically able to do so.

Should you sustain an injury while on the job, you must take the following steps:

1. Report the incident to your supervisor **immediately**.
2. Complete a written report of the incident.
3. Follow the medical provider's instructions.
4. Keep all future medical appointments.
5. Bring the Work Status form to all medical appointments.
6. Be available for Weekly Progress Meetings regarding:

- your current condition,
 - medical treatment,
 - special problems or concerns,
 - your possible return to work in your regular job or a transitional job
7. Return to a regular or temporary transitional duty position when available and the doctor permits.

Transitional duty is a temporary process that allows employees to remain productive in the workforce while they regain their full capacity during the recovery/rehabilitation process. There are two types of transitional duties that allow for this process:

1. **Limited duty** allows for an employee to work in their original job with some limitation.
2. **Modified work** allows for an employee to work a position other than their normal position.

This Return to Work policy requires employees to:

- return to work once they are medically able to do so, by a physician, to a job they are capable of performing.
- participate in this process to the best of their ability as a condition of employment.
- sign an Employee Responsibility Form which indicates that the employee has received and understands this process.

Employees that choose to not participate in this process may subject themselves to disciplinary action, up to and including termination, as well as running the risk of losing Worker's Compensation benefits.

Section 4

Wage and Salary Administration



A. Payroll Policy Statement & Procedure

A schedule will be developed for each hourly employee. The immediate supervisor and employee will be involved in the development and maintenance of an accurate schedule. Once agreed upon, the employee will only be paid the scheduled (fixed) amount unless the exception process is followed. In no case will an employee be paid in excess of the pre-determined schedule unless an exception has taken place and is documented by the employee and authorized by the Location Manager or designee.

B. Payroll Integrity Policy

This policy applies to all hourly paid employees of First Student.

First Student is committed to paying all employees correctly and to maintaining accurate payroll records. To ensure you are paid correctly, you must timely and accurately report and record all hours you work and all the earned benefit hours that you use.

Work means any activity that you are required, requested, or permitted to perform in the interest of the company or for the company's benefit.

Earned benefit hours means paid time-off hours that you earn, such as vacation, personal time, bereavement time, and disability if applicable.

Timely means by the end of the next scheduled shift.

Reporting and Recording Work Hours and Benefit Hours

You must accurately report and record all hours you work for the date you performed

the work indicating actual start and stop times, including meal periods where appropriate. Using current payroll procedures, the company will credit you with all your work hours on the date you performed the work, and with any earned benefit hours used on the date such hours were approved to be used.

Editing Time Records

Only those authorized may edit time records. Those authorized to edit time records may not edit time for another employee without prior approval.

If you are authorized to edit time records, you may not edit your own time. A First Student member of management must authorize edits to your time records when editing is required. If a member of management is unavailable another person with time editing responsibility must authorize edits to your name.

Falsification of Payroll Records Prohibited

First Student prohibits falsification of any payroll record, which includes, but is not limited to intentionally or knowingly:

- Clocking in or clocking out for another employee,
- Failing to report and record all work hours or all earned benefit hours used,
- Reporting and/or recording false information regarding work hours or earned benefits hours,
- Failing to correct false information regarding work hours or earned benefit hours, which includes repeatedly failing to correct any errors,
- Instructing any employee to falsify any payroll record or
- Misusing paid time or using paid time without authorization (e.g. using paid time and claiming pay for leisure and other non-work activities).

Reporting Procedures

If you believe that your work hours or earned benefit hours have not been accurately reported or recorded, or if you are aware of any other potential deviation from this policy, or if you have any questions or concerns about your pay, you should immediately contact your immediate supervisor, or if necessary the Compliance Hotline at 1-877-3CALLFG.

If you believe that your immediate supervisor may be violating this policy, you are not required to report the violation to that person. You may report the possible violation to any First Student member of management, or you may call the Compliance Hotline.

Employees will not be retaliated against for reporting, in good faith, suspected deviations of the policy or cooperating in an investigation.

Investigation and Appropriate Action

First Student will take any reported possible deviations from this policy seriously. The company will investigate promptly and thoroughly any report of a possible deviation from this policy. If the company determines that a deviation from this policy has occurred, it will take appropriate action, including compensating any employee for improperly edited work hours or earned benefit hours, to correct the issue and prevent further errors.

If it is determined that an employee knowingly and intentionally deviates from this policy, s/he may be subject to immediate termination and will not be eligible for rehire.

C. Garnishment and W-2 Administrative Fees

Whenever the company is required to garnish an employee's wages, an administrative fee will be charged to the employee per garnishment. Similarly, employees requesting reprints of their W-2's will be charged accordingly. These fees are state mandated fees and subject to change at the discretion of the state.

D. Charter and Field Trips

All driving and attendant positions with First Student are part-time/seasonal during the regular school year and summer school session. Optional summer route work is assigned as such work becomes available. All employees must participate in summer work when requested by local management.

It is the desire of First Student to distribute the field trip and charter work as fairly as possible among drivers who desire this additional work. It is the policy of First Student to offer this work on a rotating basis. First Student must provide its customers with the level of performance and satisfaction the customers require. Therefore, over-time and equitable distribution of work will be considered in assigning trips. Among the factors to be considered are:

- * Seniority
- * Customer preference (when agreed upon by Manager and Customer)
- * Coordination with existing runs
- * Equitable distribution of work among employees
- * Not exceeding a 40-hour workweek, unless no other option is available.
- * Does the employee have enough hours available to perform the trip without exceeding the Hours of Service Regulations as described in the Federal Motor Carrier Safety Regulations Handbook.

Management will maintain a list of all drivers in order of employment dates with the Company. Any driver who does not wish to work extra hours should request his/her name be taken off the charter/extra curricular list.

E. Payday

You will be informed of the regular schedule for the issuance of paychecks. The check will cover compensation earned for the previous work period.

Your paycheck is subject to various deductions. The stub of your check will show you exactly what deductions have been taken from your pay. You will want to keep this as a permanent record. Certain deductions are required by law. These are:

- Federal Income Tax
- Federal Social Security (F.I.C.A.)
- State Income Tax (where applicable)
- Local or county taxes

Other deductions are optional and will be taken only if you have signed a written authorization for the deduction (i.e. credit union, medical insurance, uniforms, etc.)

Any error or overpayment made in your paycheck should be reported immediately to your supervisor.

You will be required to present your driver's license when receiving each of your paychecks. If you are unable to produce your driver's license you will receive your check, but will not be able to drive again until you have produced a current license.

F. Change of Personal Status

It is critical that all changes of personal status be reported immediately in writing without delay to the Location Manager. (Examples: name, address, phone number, emergency contact, tax information, copy of license renewal) It will be your responsibility to notify the office to make the change on your permanent records. Certain Company correspondence will be mailed to your home address. It may also be important to contact you by phone for charter trips, or to contact you or your family quickly in case of illness, accident or emergency.

Section 5

Benefits



A. Benefits, Eligibility, Website

A variety of employee insurance benefit options are offered. Benefit options are communicated by the FGA Benefits Department to employees as they become eligible. Insurance benefits, along with all other economic benefits offered, are location and project based.

The **Core Benefits** available to all eligible full-time and part-time hourly employees include: \$10,000 Life Insurance and \$10,000 Accidental Death and Dismemberment Insurance, and EAP (Employee Assistance Program) services. Several optional benefits are available solely at the employee's cost paid through payroll deductions.

The FGA Benefits Website provides considerable information as well as tools to assist employees and answer benefits questions. The website additionally provides Benefits-at-a-Glance, a tool that summarizes benefits offered to employees. All employees of the Company have access to the FGA website. You are able to review, update, enroll for, and change benefit elections and personal information. To access:

- Log on to www.firstgroupamerica.com
- Click on the Employee Benefits Center link, and
- Enter your user ID (Social Security Number) and PIN (employee's two-digit birth month plus your four-digit birth year). For security reasons, first time users will be prompted to choose a new PIN. User IDs and PINs may be user changed.

If web access is not available to an employee, questions may be directed to the FGA Benefits third-party administrator by calling: 1.866.813.4778.

B. Introductory Period

An Introductory Period of 90 calendar days, starting after any period of Company-required training, shall constitute a trial period for all new hires, during which time the Company will judge the ability, competency, fitness and other qualifications of new employees to do the work for which they were employed. The Company reserves the sole right to determine the suitability for continued employment of an individual within this 90 calendar days for any reason not protected by law. During this time, you have the opportunity to evaluate the Company as a place to work, and the Company has the opportunity to evaluate you as an employee. The Company reserves the right to extend the Introductory Period.

C. Years of Service

Years of Service affects the accrual of some benefits. An employee with one or more years of service, who is rehired after voluntarily leaving the Company in good standing for not more than six months, will be granted continuous service status with regard to benefits awarded based on years of service. An employee with five or more years of service, who is rehired after voluntarily leaving the Company in good standing for not more than 12 months, will be granted continuous service status with regard to benefits awarded based on years of service.

D. Service Awards

The Company presents Service Awards to those full-time employees who have attained certain milestones of years of service to the Company.

Awards are presented upon completion of various levels of service as indicated in the Company's Service Awards Policy. Years of service include service with acquired and predecessor companies, with service awards offered on the next milestone anniversary after becoming an employee.

E. Vacation

Some locations may have the opportunity to provide paid vacation time for full-time employees. Contact your manager for specific questions or further details. Vacation time earned must be used in the current vacation year, generally April 1st through March 31st. If an employee does not use earned vacation time in the current vacation year, he or she will not be paid for it. In addition, vacation may not be carried over from year to year except where State or local law prohibits "use it or lose it" policies.

An employee who terminates from the Company, voluntarily or involuntarily, will be paid the prorated amount of vacation time allocated but not used based on the last day of employment.

All requests for vacation time earned must be authorized in advance by the employee's immediate supervisor prior to taking the time away from work. Failure to return to work on the next scheduled day following a vacation leave may result in disciplinary action, up to and including discharge.

However, if an employee terminates from the Company, voluntarily or involuntarily, prior to the end of the vacation year, and he or she has taken vacation time that exceeds the prorated earned vacation benefit based on the employee's last day of employment, the employee will be required to reimburse the Company the equivalent of vacation pay taken and not earned (unless adjusted from final paycheck).

F. Employee Assistance Program (EAP)

An Employee Assistance Program is available to provide confidential counseling, assessment, and referral services for employees with various personal or family problems. The EAP is available to all employees and immediate family members living in their household, to help address such problems as substance abuse, marital and family issues, compulsive gambling, financial and legal worries, emotional distress and anxiety, depression, or any other problem that affects job performance, relationships with others, or personal health and safety.

Call: 1.800.323.0751

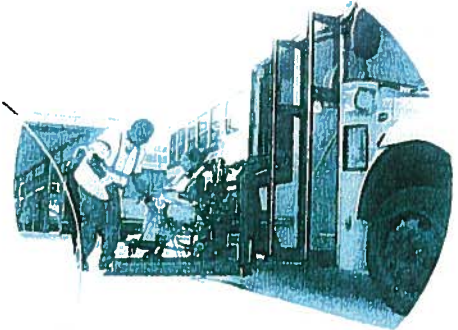
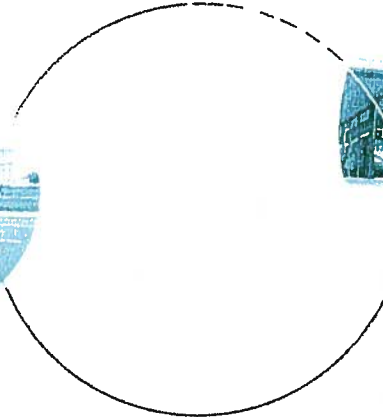
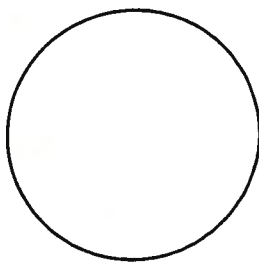
An employee in a safety sensitive position, who voluntarily seeks assistance with a personal substance abuse problem (for drugs or alcohol), prior to being referred for a test or receiving a positive test result, will be directed to the Company's Substance Abuse Professional (SAP) for help. In these instances, call Supportive Systems at 1.800.660.6645.

G. Employee Discount Program

The Company is proud to work with several local, regional and national-chain businesses to offer an employee discount program to you and most often times, your family. With this program, there are many great offers, discounts and deals on a wide-array of products and services that may include but not limited to: cellular phones services and accessories, restaurants, vehicle purchases and rentals and many more. Please contact your location management team to learn more about the employee discount program available with our current vendor.

Section 6

Company Rules and Personal Conduct



A. Employee Misconduct

To ensure orderly operations and the best possible work environment, First Student expects employees to follow rules of conduct that will protect the interests and safety of all employees and the organization. It is not possible to list all the forms of behavior that are considered unacceptable in the workplace. Some rule infractions may be cause for immediate termination and some infractions may be subject to progressive disciplinary steps, i.e., verbal and written warnings, and suspensions from work.

The infractions listed below are examples of unacceptable behavior that may subject an employee to immediate termination:

1. Failure to observe or disregarding company safety processes, policy or procedures.
2. Leaving the bus unattended or unsecured with children or any passenger on board.
3. Falsification of employment application, time cards, or other company records.
4. Dishonesty, theft, or misappropriation of Company property.
5. Immoral, illegal, or indecent conduct.
6. Possession, use or sale of any intoxicating beverage, controlled substance (drugs), firearms, or any other type of weapons, on Company property or while in the possession of a Company vehicle. This prohibition includes firearms the employees may be properly licensed to carry if they work as a security or police officer in their other job or for personal reasons.
7. Reporting to work under the influence of an intoxicant, narcotic, or controlled substance (drug), or refusal to take any drug or alcohol test when required.
8. Carrying an unauthorized passenger in a company vehicle.
9. Repeated violations of unacceptable conduct.

10. Failure to stop at railroad crossings when required by law or company policy.
11. Physical or verbal abuse, and/or inappropriate touching.
12. Conviction of any felony or any other serious criminal offense.
13. Other serious misconduct and/or violations of First Student policies and rules.

Similarly, the following, although by no means an exhaustive list, are examples of conduct that may result in progressive discipline, including those items listed in subsections B through E, listed below. Depending on the severity of the rule infraction, however, disciplinary action could bypass the progressive steps and result in suspension or termination.

1. Violations consistent with the location attendance policy.
2. Negligent damage to equipment.
3. Insubordination; failure to follow instructions; defiance of instructions.
4. Failure to observe sanitation, or disciplinary policies, laws and regulations of the state, school district, or Company.
5. Deviation from assigned routes until approved by management and/or district.
6. Failure to report a collision, personal injury or safety related passenger incidents immediately, but no later than 24 hours following if after hours or on a weekend, and completing required reports.
7. Failure to report a moving traffic violation, a citation, and/or conviction in any vehicle, including personal, in any State, within seven (7) days to the Company.
8. Poor work habits, which include loafing, wasting time, loitering, excessive visiting, sleeping on the job, fighting or disorderly conduct, or improper use of two-way radios.
9. Use of cellular phone or eating and drinking while operating a company vehicle. Your personal cellular phone must be switched off while operating a company vehicle or your own vehicle on company property.
10. Unauthorized use of company vehicles.
11. Other misconduct and/or violations of First Student policies and rules.

B. Prevention of Workplace Violence

At First Student, a safe work environment is fundamental to the success of our employees and our company. Each First Student employee has the right to expect that his/her workplace is free from intimidating, threatening or dangerous behaviors and practices. Therefore, First Student will not tolerate the following actions against fellow employees, customers, vendors, contractors, as well as the general public:

- Violent behavior
- Threats of violence
- Harassment, physical or verbal
- Intimidation
- Any conduct that creates an intimidating or otherwise offensive work environment
- Other prohibited conduct described below

The following are examples of conduct that, if committed in person, in writing, by electronic mail, or by any other means, is prohibited:

- Direct, indirect, or implied threats toward persons or property
- Vulgar, profane, or offensive language toward others
- Disparaging or derogatory comments or slurs
- Offensive sexual flirtations or propositions
- Verbal intimidation or bullying
- Exaggerated criticism, name calling, or belittling behavior
- Hitting, striking, pushing, kicking, or holding
- Impeding or blocking movement of another person or urging others to do the same
- Using, threatening, or implying the use of any weapon or object that could be used as a weapon
- Derogatory or offensive posters, cartoons, drawings, or publications

Tardiness and Absences

First Student is contractually obligated to provide on-time delivery of students. Therefore, when an employee is absent or late, it causes considerable difficulty in completing bus schedules on time. If you find it necessary to be late or absent, you must notify your supervisor directly as early as possible. Except for emergency situations, notification should be NO later than the night BEFORE your route. You should indicate the reason for being late or absent. If you know you are going to be late or absent for more than one trip or run, please report that fact. If not stated, it will be assumed the call covers one trip or run only. Habitual tardiness or absence will be cause for disciplinary action.

D. Telephone Usage

The office will receive and deliver personal messages to Company personnel in the case of emergency only. Any calls of a personal nature will be referred to your home, or a message given to you for call back at another time and place.

Where Company phones are available, we must ask that no long distance calls be made. Abuse of these phones will result in their removal.

E. Personal Appearance

If uniforms are provided, they should be kept in good repair and worn every day. Regardless of whether uniforms are available, all First Student employees must present a neat and clean appearance, appropriate for the job assigned. The benefits of a neat and clean appearance are many, but the major impact on people in our business is that:

1. It demonstrates self-respect.
2. A neat and clean appearance commands more respect from the student passenger and will help maintain better discipline.

Items that are not acceptable as proper dress on the job include:

1. Shirts or blouses without sleeves below the shoulder, such as tank tops, halter-neck tops, etc.
2. Shirts and slacks that have a "torn off" look.
3. Clothes with holes, tears or un-repaired damage.
4. Sandals, clogs, platforms, or any footwear other than fully enclosed flat heeled shoes (no more than $\frac{3}{4}$ inch). Footwear must be appropriate for the weather conditions.
5. Any clothing displaying wording or slogans which do not represent First Student's image and employee principles.
6. Short-shorts.
7. Body fit clothing, i.e., spandex and muscle shirts.
8. Loose or hanging clothing, jewelry or other accessories that could become caught on vehicle equipment or moving parts of the vehicle.

F. Exit Interviews

Management will conduct exit interviews for employees who terminate for reasons other than discharge for work rule violations. Any questions concerning discharge payments or eligibility for unemployment compensation will be answered during the exit interview.

G. Cell Phones and Wireless Internet

Personal cell phone use for personal reasons during business hours must be strictly limited. Cell phones issued by the Company to hourly employees are intended for use during business hours and for business purposes only and may not be used for text messaging. Employees out of town on business should use a Company cell phone for business calls and limited personal calls instead of a hotel phone. Cell phones and Blackberry-type units issued to Salaried Employees are intended for business use, recognizing that Salaried Employees will be privileged to use the Company issued unit for personal use within the limits of the phone service plan provided by the Company.

Cell phone use is prohibited (1) when driving on Company business and (2) while driving on Company owned or occupied property. All cell phones (and other cellular devices) must be powered off and stowed (placed out of sight or the phone may not be on one's body) while a driver is operating a company vehicle (passenger revenue/student transportation). It is not acceptable to have the cell phone powered on, even if in vibrate or silent mode. Cell phone calls should not be taken during any business meetings, unless an emergency condition exists. If so, the person should apologize and take the call elsewhere.

Although most cell phones now have the ability to take pictures and video and transmit them elsewhere, under no circumstances are cell phone cameras or videos permitted to be used in Company locations, except for business purposes and with prior approval from the manager. Unauthorized actions under this rule could compromise legitimate

Company business activities and violations may result in disciplinary action up to and including discharge.

The use of Wireless Internet technology, WiFi, to access Company email and other Company systems may be used with written approval

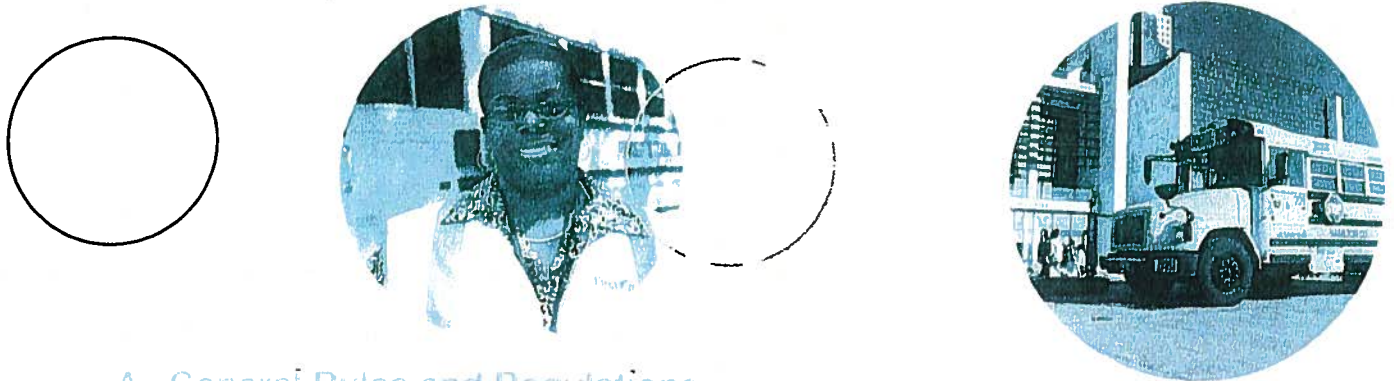
R. Use of Cell Phones and other electronic devices While Driving

Employees may not use any type of cell phone, cell phone accessories (including voice, image, and text messaging) and other distracting electronic devices while driving on Company business or driving/walking on Company owned or occupied property. The term "cell phone" includes, but is not limited to: cell and mobile phones, mobile or other electronic devices for personal communication, handheld or hands-free electronics devices, ear buds, blue tooth, voice recognition, etc. This is not to be confused with Company provided press-to-talk devices used in place of two-way radios.

The term "driving" is defined as being in control of a vehicle, even when the vehicle is stationary with the engine running. "Non-driving" would be defined as the vehicle is parked in a safe place with the gear selector in Neutral (for manual transmissions) or in Park (for automatic) with the emergency/parking brake applied and the engine turned off. Use of a cell phone, including having the cell phone not off and stowed while a driver is operating a passenger vehicle (revenue/student transportation), is strictly prohibited. Disciplinary action up to and including discharge may result.

Section 7

Rules and Regulations for Operating a School Bus



A. General Rules and Regulations

Violation of any of the following requirements will result in disciplinary action, up to and including termination:

1. Driver shall abstain from the use of tobacco products while in the school bus or while on school property - with or without children present.
2. Driver and attendant must follow the sleeping child/passenger inspection procedure contained below in Section "B".
3. Driver shall abstain from eating or drinking while operating the school bus. Any items brought on the bus must be secured away from the driver's reach and can only be consumed during scheduled breaks when NO passengers are on board and the vehicle is safely secured.
4. No employee shall mount a "drink holder" device in any FS, company vehicle.
5. No driver or attendant shall use profane or indecent language.
6. First Student prohibits school buses from turning "right on red" (except when required by law).
7. Driver shall never fuel a bus with passengers in the bus or while the motor is running. The driver will hand pump the fuel with no locking device to be used, and shall wear all required personal protective equipment and follow the "Fueling Policy" procedures.
8. Driver shall obey all railroad crossing laws and all other laws, rules and regulations applicable to the operation of school buses. Drivers must activate 4-way hazard lights, stop, place the transmission in "neutral", secure the parking brake, open the driver window and bus service door at all railroad crossings, look and listen. Once the driver has determined it is safe to cross the tracks, the service door will be closed before the bus proceeds. Deactivate the 4-way hazard lights as the bus reaches the safe operating speed. First Student buses will stop at all railroad

crossings, unless clearly marked exempt or having an authorized person directing traffic, whether carrying passengers or not.

9. Drivers are responsible for ensuring that the vehicle is safe to operate by conducting the proper pre-trip inspection as required by laws and regulations and the company; to include cleanliness of windows, aisles free from damage and obstructions, outside mirrors and lights. It is important that drivers also look for objects inside or that may have been placed there by unknown persons with the intent to create harm and damage. Please follow the directions as provided for this purpose, these may change from time-to-time as we learn more about outside threats. Any object found that does not belong in or on a vehicle must be IMMEDIATELY reported to a supervisor. DO NOT TOUCH OR ATTEMPT TO REMOVE THE OBJECT. When on a trip or the vehicle is parked out and the driver returns to the vehicle it is necessary to inspect for such objects.
10. Driver shall keep the aisle and emergency exits unobstructed at all times while transporting passengers.
11. Bus doors shall be closed while the bus is in motion.
12. Drivers shall operate all vehicles on First Student property at speeds **not to exceed Five (5) MPH**. Drivers must comply with the posted speed.
13. Drivers shall not use a cell phone while operating a First Student vehicle. In those locations where a NEXTEL system is used in place of two-way radios, drivers shall follow the company instructions for using the system.
14. Drivers or attendants shall not physically touch students unless necessary to protect themselves or another passenger when an assault is taking place. When touching a child with special abilities to assist with securing or proper seating, it shall be done with the permission of the parent.
15. Drivers shall ask for backing assistance when it is necessary to back a First Student vehicle on Company property. It shall be the driver's sole responsibility to secure the bus and be certain that the way is clear before moving the vehicle backwards. When on trips drivers should be careful to not drive the vehicle into a situation that requires backing to get out. In those rare situations where backing is the only choice or becomes necessary, the driver is to enlist help from one of the adults on the vehicle to provide backing assistance. Drivers are not to ask a student to help with backing, no matter what age the student may be.
If away from the yard on a trip and no assistance is available, and the bus does not have passengers on board, the driver is to secure the vehicle, get out, and look before performing the backing.
16. Drivers shall have their seat belt properly secured at all times while operating a company vehicle.
17. In order to remain in compliance with state and federal idling and environmental laws, all Operators/Drivers must comply with the First Student Anti-Idling Policy, which prohibits idling a First Student vehicle for more than 3 minutes while not in transit. Exceptions include (1) conditions that might compromise passenger safety, such as extreme cold weather; (2) idling while stopped in traffic; or (3) repairs or maintenance that requires the vehicle to be running. Please refer to the Policy, the postings around your location or your supervisor if you have questions.

B. Sleeping Child/Passenger Inspection Procedure

It is the responsibility of each driver and attendant to follow without exception, the company procedures for performing the sleeping child/passenger inspection procedure.

1. "Home to School" Inspection for AM or Midday

- A. Before leaving the parking location to begin the route, as part of the daily pre-trip, the driver shall:
 - Perform the Child Check-Mate pre-trip ensuring the system is operational.
 - Remove the "Bus has been searched for sleeping children" or "Bus Empty" sign and secure it in a storage area in the front of the bus.
 - If no sign is present, driver must obtain one before using the vehicle. If parked-out, call dispatch for guidance.
- B. Before the first child enters the vehicle, the driver must ensure the Child Check-Mate system is activated and remains armed by whichever system your bus is equipped with – the 8-way light system, marker lights or brake lights.
- C. After unloading at school and before leaving the school property the driver and attendant shall:
 - Walk the inside of the bus to the last seat, searching on and under each seat for children/passengers and any personal items left on the bus.
 - After ensuring the bus is empty and all personal items have been collected, the driver may continue to the next route tier.
- D. For each school the driver shall perform the procedure outlined above in "C" prior to leaving school grounds.
- E. When the home-to-school route is complete and before leaving the bus unattended, a "final" inspection of the bus interior must be performed for sleeping children/passengers and any personal belongings left behind.
- F. Before removing the key and exiting the driver shall:
 - Search for sleeping children or passengers on and under each seat while walking to the last seat.
 - This search is performed *before* beginning the post trip inspection.
- G. When the driver is satisfied there are no sleeping children or passengers on-board, the driver shall:
 - Perform the post trip inspection.
 - Take the Bus Empty sign from its storage place and walk to the back of the vehicle (always searching).
 - Hang the sign in the rear of the vehicle, attached in an upper window or rear door, easily viewed from outside.
 - Depress the Child Check-Mate reset button.
- H. In addition to the above procedure, if the vehicle is "parked out," the driver will contact dispatch to verify the search has been completed and the bus is empty.

2. "School to Home" Inspection for Midday or PM

- A. Before leaving the parking location to begin the route, the driver shall:

- Perform the Child Check-Mate pre-trip ensuring the system is operational.
 - Remove the Bus Empty sign and secure it in a storage area in the front of the bus.
- B. Before the first child enters the vehicle, the driver must ensure the Child Check-Mate system is activated and remains armed by whichever system your bus is equipped with – the 8-way light system, headlights or brake lights.
- C. After the last stop or drop off from each school and before going to the next school the driver shall:
 - Pull the bus over out of traffic in a safe location, activate the 4-ways, and secure the bus (shift to neutral, set emergency/parking brake).
 - Walk the inside of the bus to the last seat, searching behind and under each seat for children/passengers and any personal items left on the bus.
 - Before continuing to the next school on the route the driver and attendant must ensure the bus is empty and all personal items have been collected.
- D. For each completed route tier the driver shall perform the procedure outlined above in “C” prior to continuing to the next school.
- E. When the school-to-home route is complete and prior to leaving the bus unattended, perform a “final” inspection of the bus interior for sleeping children/passengers and any personal belongings left behind.
- F. Before removing the key and exiting the driver shall:
 - Search for sleeping children or passengers on and under each seat while walking to the last seat.
 - This search is performed *before* beginning the post trip inspection.
- G. When the driver is satisfied there are no sleeping children or passengers on-board, the driver shall:
 - Perform the post trip inspection.
 - Take the Bus Empty sign from its storage place and walk to the back of the vehicle.
 - Hang the sign in the rear of the vehicle, attached in an upper window or rear door, easily viewed from outside.
 - Depress the Child Check-Mate reset button.
- H. In addition to the above procedure, if the vehicle is “parked out,” the driver shall contact dispatch to verify the search has been completed and the bus is empty.

3. Charter, Sports Trip and Field Trips

I. Yard to pick-up point

- A. Before leaving the parking location to begin the route, as part of the daily pre-trip, the driver shall:
 - Perform the Child Check-Mate pre-trip ensuring the system is operational.
 - Remove the “Bus has been searched for sleeping children” or “Bus Empty” sign and secure it in a storage area in the front of the bus.
 - If no sign is present, driver must obtain one before using the vehicle. If parked-out, call dispatch for guidance.

II. Pick up-point to destination

- A. Before the first child/passenger enters the vehicle at the pick up point, the driver must ensure the Child Check-Mate system is activated and remains armed while children are being transported.
- B. After unloading at the destination walk the inside of the bus to the last seat, searching behind and under each seat for children/passengers and any personal items left on the bus.
- C. If the vehicle will be left unattended, before turning off the bus and exiting, the driver shall:
 - Search for sleeping children or passengers on and under each seat while walking to the last seat.
- D. When the driver is satisfied there are no sleeping children or passengers on-board, the driver shall:
 - Take the “Bus has been searched for sleeping children” or “Empty” sign from its storage place and walk to the back of the vehicle.
 - Hang the sign in the rear of the vehicle, attached in an upper window or rear door, easily viewed from outside.
 - Depress the Child Check-Mate reset button.

III. Return to pick-up point

- A. Before beginning your return trip, remove the “Bus has been searched for sleeping children” or “Bus Empty” sign and secure it in a storage area in the front of the bus.
- B. Before the first child enters the vehicle, the driver must ensure the Child Check-Mate system is activated and remains armed while passengers are being transported.
- C. After unloading at the pick-up point, walk the inside of the bus to the last seat, searching behind and under each seat for children/passengers and any personal items left on the bus.

IV. Return to yard or park-out location

- A. When the charter is complete, before turning off the bus and exiting, the driver shall:
 - Search for sleeping children or passengers on and under each seat while walking to the back.
- B. When the driver is satisfied there are no sleeping children or passengers on-board, the driver shall:
 - Take the “Bus has been searched for sleeping children” or “Bus Empty” sign from its storage place and walk to the back of the vehicle.
 - Hang the sign in the rear of the vehicle, attached in an upper window or rear door, easily viewed from outside.
 - Depress the Child Check-Mate reset button.
- C. The driver shall follow the location procedure for notification to dispatch after normal business hours notifying the bus has been searched and is empty.

4. Child Check-Mate System

Introduction

The Child Check-Mate Safety System is an electronic child reminder which was developed as a driver's aid to increase child safety and job security. The Child Check-Mate system is activated when the brake pedal is applied or when you engage your 8-way flashers by opening the loading door with your master switch in the "ON" position, when you pick up your first student of the day. Some systems are activated by engaging the marker/headlights. The system cannot be deactivated until the driver walks to the rear of the bus and depresses the "Stop and Check" reset button upon completion of each run. The system is simple to use and does not interfere with the normal course of the driver's daily routine with the exception of pushing a button at the back of the bus. The Child Check-Mate system does not remove the responsibility of the driver to check his/her vehicle every time the bus becomes empty after completing a route and before going on to the next school/route.

System Check - Driver Responsibilities

It is the responsibility of the driver to perform a system check daily or when assigned to an alternate vehicle for the first time. Before operating the school bus, as part of the daily pre-trip, the driver shall be satisfied the Child Check-Mate system is functioning properly. The driver must follow the company's approved Child Check-Mate operating guidelines.

Pre-trip Inspection – Brake Activation

Check the system as part of your normal "pre-trip check" before putting bus into operation. Before leaving the yard every day make sure the Child Check-Mate System is fully operational as follows:

- Turn key to ON or ACCESSORY position, or start the bus if necessary.
 - You should hear an audible sound indicating that the system is functioning.
- Activate the CCM system by depressing the service brake pedal.
 - o If brake pedal is depressed within 12 seconds after ignition is turned on, an audible sound will be heard, but the CCM System is not activated.
 - o If brake pedal is depressed after 12 seconds, an audible sound and the voice message, *"Child Check-Mate is now activated. Child Check-Mate self check confirmed"* will be heard indicating the system is now armed.
- Turn the ignition to OFF position.
 - o The system alarm (a high pitched beeping) should begin to sound and dome lights will come on.
 - o After approximately 8 seconds the bus horn should start to pulsate off and on.
 - o This system is designed in such a manner that the ignition key must be turned off for at least 1 second and then back to "on" or "accessory."
- Turn the ignition back "ON" or to the "ACCESSORY" position.
 - o The alarm should be silenced in either position, the dome lights will remain on.
 - o You will hear an audible chirp and/or **voice message**, *"Please conduct your child search now."*
- Proceed to the rear of the bus, always searching for children.

- Depress the reset button and hold for at least 2 seconds.
 - o Deactivation signal sounds (rapid chirping sound) and/or **voice message**, "Child Check-Mate is now deactivated."
 - o Dome lights remain on for 45 - 60 seconds (depending on bus).
- The system has been deactivated.
 - o The key can be removed from the ignition.

Weekly Verification

- You must also perform a weekly verification allowing the horn to activate.
- This may be checked after you board the bus by waiting more than 30 seconds before turning the key to ON or ACCESSORY.
- Region/location should determine best routine for ensuring this takes place weekly, i.e. "every Monday morning horn verification is performed and driver writes *HORN VERIFICATION PERFORMED*" on *DVIR* or checks appropriate box depending on *DVIR* form.

System Failures

The driver discovering a system malfunction shall document in the *DVIR* and report the defect to the maintenance personnel and location manager immediately. The maintenance technician shall diagnose the system and if able to correct the defect, perform the repair and return the bus for active service. If the system requires repairs which may not be made immediately the bus may continue to be used for service under the following condition:

- The Location Manager shall require a second person to inspect the bus immediately upon its return to the lot and before the driver exits the bus.
- Buses which have a system malfunction may not park out.

Prohibition Against Tampering With Child Check-Mate Device

Any employee who willfully tampers with a Child Check-Mate device is subject to immediate termination. This does not apply to technicians performing maintenance related functions to the bus or the device.

"Tampering" means to attempt to render the device incapable of proper and effective action or to materially impair the functioning of the device.

G. Collisions and/or Work-related Injuries

All collisions and work related injuries are preventable!! Should a driver be involved in a collision, the first responsibility is for the safety and well being of the students/passengers on the bus. Any driver involved in a collision **MUST** contact First Student dispatch allowing appropriate calls to be placed. **DO NOT** move your bus until instructed by a police officer, dispatch, or a supervisor. The exception would be if the position of your vehicle places yourself, your passengers or other motorists in immediate danger. Upon return to the location, the collision must be immediately documented and appropriate reporting forms completed as directed by the Manager.

A collision or work related injury that occurs on First Student property must also be reported immediately to Dispatch, or the Manager, regardless of the extent of the damage or injury. Any driver who is involved in a collision or work-related injury while

on-duty in a First Student vehicle, or on First Student property, and fails to properly notify a supervisor may be terminated with the first offense.

D. School Bus Speeding Violations

It is the policy of First Student that drivers operate company vehicles at or below, but not to exceed, the posted speed limit. The vehicle speed shall be established based on the posted speed limit, weather and road conditions, traffic or any other condition that would warrant operating at a lower speed than what is posted. When traveling on Interstate highways, First Student vehicles should not travel in the far left lane becoming a hazard to other vehicles, but should only use that lane for short distances to pass slower moving vehicles.

First Student buses providing Home to School and School to Home transportation are not permitted to use High Occupancy Vehicle (HOV) lanes. For charter trips usage of HOV lanes are permitted based upon a risk assessment of the HOV lane provisions. For information please see your Region Safety Manager.

It must be noted that certain states have different guidelines for the maximum speed a school bus transporting school age children may travel. Each driver is responsible to know these laws and regulations and to follow them without exception.

In the event a driver is convicted of a speeding violation in a school bus at 10 MPH or less in excess of the posted speed limit, disciplinary action will be taken as outlined in the Employee Discipline for Moving Violations table (Fig.1). If the conviction for speeding in a school bus is more than 10 MPH over the posted speed limit, a more serious penalty may be necessary including suspension or termination – regardless of the driver's previous driving record.

E. Responsibility to Report

It is the driver's responsibility to notify his/her supervisor of any of the following events (occurring on or off the job) within the time frame stated below:

- DUI/DWI Arrest - *Immediately*
- Moving Violation Conviction - *Within seven (7) calendar days for conviction on or off the job.*
- Collision - *Immediately if occurred on job/before the next job shift if off the job.*
- Incident - *By the end of the business day.*
- Change or status of license - *before the next scheduled shift of duty (suspension, revocation)*
- Criminal arrests, convictions, pleas of guilty and findings of guilt – *Immediately*

An employee who fails to notify the Company of any of the above occurrences within the time frame indicated will be subject to disciplinary action, up to and including termination.

F. Progressive Discipline

Any conviction of a moving traffic violation in any vehicle – company, private, or other – will result in disciplinary action as outlined in Fig. 1. Violations which demonstrate reckless disregard for passenger safety (example: speeding conviction with passengers on board) may be cause for a jump step up to termination of employment.

(Fig.1)

Moving Traffic Violations

One (1) conviction in last 36 months	Written warning placed in driver file
Two (2) convictions within 36 months	Disciplinary suspension of three (3) days & Suspension notice placed in driver file
Three (3) convictions within 36 months	Termination

In the event a driver is involved in a preventable collision, or a driver or driver and attendant fail to check a bus for sleeping children/passengers, the disciplinary action is outlined in Fig. 2.

(Fig.2)

Preventable Collisions and Failing to Check for Sleeping Children/Passengers

A failure is: anytime a driver or a driver/attendant fail to check the bus for sleeping children/ passengers and follow the required process and it is discovered.

Any loss producing event that results in third party liability and/or damage over \$100.

No. of Collisions or Failures to Check Bus	Action
One (1) preventable collision in the last 36 months – one (1) failure to check for sleeping children/passengers	Written warning placed in driver file.
Two (2) preventable collisions within 36 months Two (2) failures to check for sleeping children/passengers	Disciplinary suspension of three (3) days & Suspension notice placed in driver file
Three (3) preventable collisions within 36 months Three (3) failures to check for sleeping children/passengers	Termination

“Jump-Step”: is when the violation is serious enough to skip the applicable discipline level and move directly to the “next” level. For example: this may be an employee’s first preventable collision, but the severity moves it to the discipline level of the second preventable.

Any backing collision deemed preventable will be an automatic jump to the next level of discipline.

Rear end collisions usually result from inattention and/or failing to maintain a safe, clear following distance. As a result, any rear end collision will be considered as a serious collision, and may result in termination for the first offense.

(Fig. 3)

Preventable Incidents

Any condition or act that results in physical damage to any Company vehicle while on or off Company property may be cause for disciplinary action as outlined in Fig. 3. An incident is defined as any condition or act that results in physical damage to our bus or property costing less than \$100 for total repairs, and does not result in exposure to or payments of any kind to a third party.

FIG. 3 Preventable Incidents

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One (1) preventable incident in the last 18 mos.	Noted in driver file and verbally discussed with driver.
Two (2) preventable incidents within 18 months	Written warning placed in driver file
Three (3) preventable incidents within 18 months	Disciplinary suspension of three (3) days & Suspension notice placed in driver file
Four (4) preventable incidents within 18 months	Termination

(Fig. 4)

Preventable Injuries

Preventable injuries are those that occur as the result of the employee violating a safety rule, acting in an unsafe manner, or ignoring best safety practices.

FIG. 4 Preventable Injuries

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One (1) preventable injury in the last 36 months	Written warning placed in driver file.
Two (2) preventable injuries within 36 months	Disciplinary suspension of three (3) days. & Suspension notice placed in driver file.
Three (3) preventable injuries within 36 months	Termination

G. Preemption

This procedure on driver standards outlines the minimum standards for driver discipline. This procedure is preempted by any state or local law, or any school bus contract that requires more stringent standards.

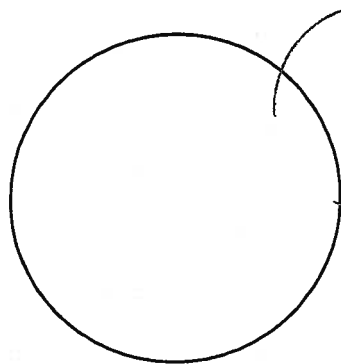
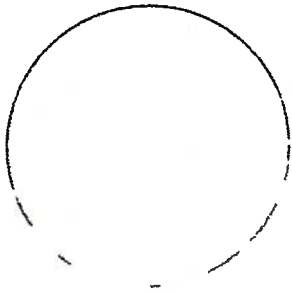
H. General Principles for Progressive Discipline

The following general principles will be considered when determining the proper disciplinary action for moving traffic violations, preventable collisions and preventable incidents:

- * Multiple infractions may be combined to show cause for suspension or termination earlier than indicated.
- * More serious collisions/injuries/incidents may be cause for suspension or termination earlier than indicated.
- * Moving traffic violations prior to hire - on or off job – count, they are not exempt.

Section 8

Driver Standards



In order to maintain the highest degree of safety for our passengers, it is in everyone's best interest to establish and enforce driver standards that clearly state the expectations of the Company and itemize the responsibilities of the driver.

A. Annual Driver Performance Review

To ensure the safety of our operations, in accordance with the Federal Motor Carrier Safety Regulation 391.25, "... each motor carrier shall, at least once every 12 months, make an inquiry to obtain the motor vehicle record of each driver it employs, covering at least the preceding 12 months..."

First Student may also conduct a periodic review of our drivers' overall operating history including motor vehicle records, as a result of but not limited to, an observed driving deficiency, customer complaint, speeding or reported unsafe driving.

Each driver will complete, sign and date a Certificate of Violations listing all moving traffic violations and collisions within the past twelve (12) months. Traffic violations and/or collisions depicted in the Certificate of Violations are subject to company driving standards and normal disciplinary steps will be applied. Violations in the driver's personal vehicle count toward the total violations.

The Location Manager or designee will review the MVR and the Certificate of Violations to verify any infractions listed were reported to First Student within the seven (7) day window required.

The Location Manager will also conduct the Annual Driver Performance Review at this time. Drivers who are identified as "High Interest" drivers will receive skills enhancement

to improve their performance. High Interest Drivers must successfully complete follow-up driving/road observation evaluations to be removed from the High Interest Driver list. Keeping your license in good standard is an obligation of your job.

B. Annual Behind-the-Wheel (BTW) Performance Evaluation

Each First Student driver shall receive a BTW performance evaluation at least once annually; wherever possible, twice annually.

To obtain a comprehensive evaluation, it should be conducted during route time to observe interaction with the passengers and actual loading/unloading procedures and be performed by an instructor/trainer.

The evaluation shall include, but not be limited to, the application of the Smith System 5 Keys, loading and unloading of actual passengers, railroad crossing procedures and pre/post trip inspection, including all Sleeping Child Protection Procedures.

The driver must receive a satisfactory rating on all areas of the evaluation. Any area where the driver's performance does not meet FS standards and is indicated by the evaluator as "Needs Improvement," enhancement training will be scheduled and conducted within 30 days of the evaluation.

If the driver's performance is determined by the evaluator to be "Unsatisfactory," the enhancement training must be conducted immediately. Dependent upon the severity of the deficiency, it may be necessary to remove the driver from active job functions until the training is completed and a satisfactory second evaluation is achieved.

Other

- No positive result or refusal of a pre-employment drug/alcohol test, and no positive result or refusal of a drug/alcohol test.
- Qualified applicants must be able to pass a U.S. Dept. of Transportation physical examination (driving positions only) and First Student Physical Dexterity Performance Test (drivers and attendants).

Physical Performance Dexterity Testing (applies to both drivers and attendants)

Standard	Time	Demonstrates the ability to:	Required for:
Climb and descend steps	30 seconds	Move in and out of bus to attend to students and to perform an evacuation in a timely fashion	Driver and Attendant
Throttle and brake	10 seconds	Operate pedals quickly in a driving situation	Driver only
Brake/clutch pedal	5-3 second repetitions	Hold brake and clutch for extended duration as can occur in certain driving situations	Driver only
Open and close door	N/A	Open the entrance door as a driver is required to	Driver only
Emergency exit the bus	20 seconds	Exit the bus through an emergency exit in an evacuation	Driver and Attendant
125 pound weight drag	30 seconds	Drag an incapacitated child out of bus and/or away	Driver and Attendant
Operate controls of bus	8 seconds each	Steer the bus and operate hand controls simultaneously	Driver only

First Aid Training

Each driver and/or attendant must meet minimum state/contractual requirements for first aid training. Where required, drivers/attendants will receive CPR training, as well as any other training required by local policy or contractual agreement.

State Requirements

The school bus driver shall meet all state requirements.

Meetings

Each driver/attendant must attend regularly scheduled and called meetings and/or make arrangements to make-up the meeting.

Dependability

A driver must maintain a record of dependability.

Section 9

Driver Training



The materials included in First Student training programs utilize sound, basic instructional concepts and principles along with broad, in-depth development of essentials for effective school bus operations.

Our training program will involve both Classroom and Behind-The-Wheel curriculum. The amount of time required for training each school bus driver applicant will vary depending upon prior knowledge and previous background. There are base core competencies that each applicant must complete prior to qualifying as a First Student driver.

Each year returning drivers will be subject to knowledge and skills evaluation and training for certain base core competencies to continue as qualified First Student drivers.

Training for new drivers as well as returning drivers will be documented as it is completed and placed in their active individual training file. This will be done at the beginning of each school year for returning drivers and at initial employment for new drivers. Documentation will also be a requirement of enhancement training. This is done for the protection of both driver and the Company. The complete details of the company training requirements are contained in the First Student Safety Standards manual in the training section. If you have any questions about these standards please see your Location Manager or Safety Staff.

Drivers who are involved in a preventable collision will be scheduled for enhancement training. The training topic and skill will be directly related to the type of collision and will vary in the amount of time required. A typical training session will consist of a discussion of the sequence of the collision events and a review of the pertinent Smith System Key (s) in the classroom. This will be followed by behind the wheel training and application of the Smith System Keys. Additionally other driving skills may need to be

reviewed due to the type of collision. The goal for this training is to improve the driver's knowledge and skill necessary to avoid a similar collision in the future. This training is not part of the disciplinary process related to a collision.

Some of the districts that we serve have established practices and regulations, which they feel, are appropriate to their particular situations while others leave these decisions to our expertise. The training curriculum is developed over two phases: 1) topics required by First Student, 2) topics required by individual states and/or customer contracts. Training is a joint responsibility, the company will provide the material, equipment, and trainer, and the employee/applicant will provide attendance, attention and demonstration of the learned skill and knowledge.

It is the individual responsibility of the employee to ensure he/she has met all legal qualifications required by law, rule and regulation to operate the type of vehicle he/she is assigned. It is the responsibility of the First Student management staff to ensure all company requirements are met before an employee is allowed to operate a First Student vehicle.

A. Passenger Management

In order to safely operate a school bus with children on board you must be able to manage the children's behaviors to minimize distractions to your driving. All drivers and attendants will receive training on "Passenger Management" By participation in our "Passenger Management" training, behaviors can be managed to prevent distractions from becoming safety issues for you and our passengers. This training will also help to prevent minor incidents between children from escalating into situations which result in violence.

First Student is taking a leadership position within our industry by implementing training for all drivers and attendants on recognizing and preventing bullying on our buses. This training process is called "Growing Respect".

Drivers and attendants will be required to receive this training. Training consists of the following parts: Areas of responsibility, (passenger, driver, district); characteristics of effective drivers; skill building for routine situations; and dealing with "extreme" situations and the "Growing Respect" anti-bullying training.

You, the First Student employees, bus drivers, attendants, are key ingredients to our success. The entire First Student organization is here to support you so that you may do your jobs well. Drivers and attendants must remember they are engaged in a tax-supported public service. The most important people in our business are the school children, passengers, parents, and school representatives. The individual bus driver in charge of the vehicle is First Student. As such, the bus driver is a major factor in the creation of First Student's public image. There is no substitute for the application of genuine courtesy and a friendly, helpful approach, coupled with good judgment. Public relations, good or bad, do not come from what we say about ourselves; it comes from what we DO. We are in a "highly visible" position throughout the communities we serve.

Our goal is to provide you with the knowledge, tools, and skills to safely and effectively deal with situations that occur on board the bus. We care about your safety and want you to obtain the confidence to be successful as a valued member of our team.

B. Student Confidentiality

The Family Education Rights & Privacy Act (FERPA) is the law requiring school districts, with some exceptions, to obtain written consent prior to disclosing personally identifiable information from the child's education records. Any information regarding the child **MUST** be kept confidential. The law changed in January 2009 to include school bus drivers and attendants as a "school official" with "legitimate educational interests" allowing us to obtain the information necessary to perform the related service of transportation.

First Student employees must not disclose any information other than with school officials or their supervisor regarding a student, whether they are disabled or not, that may be used to identify a student. This includes information about the child's disability, the characteristics that may be discussed in order to work with the student, the student's personal information and any other information related to the student.

Be sure that all the parties involved in your discussion have a legitimate interest in the welfare of the child. Discussions should be held in private to ensure you are not violating the child's right to privacy

C. In-service Safety Training

Drivers/Attendants are responsible for attending all Mandatory In Service Training Sessions. This training is designed to enhance the driver's/attendant's safety knowledge and awareness to educate and inform them of safety trends and preventative strategies as well as any necessary changes in safety procedures.

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Notes

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page or a sheet of stationery. There is no handwriting or other markings on the page.

Notes

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

Amended, July 2011

This is to acknowledge that I have received a copy of the **First Student Employee Handbook** and understand that it contains important information on the Company's general policies and on my privileges and obligations as an employee. **I acknowledge that I am expected to read, understand and adhere to the Company policies and will familiarize myself with the material in the Employee Handbook.**

I understand that the Company may change, rescind, or add to any policies, programs or procedures described in the Employee Handbook from time to time at its sole and absolute discretion with or without prior notice.

I understand that employment with First Student is considered to be "At-Will" employment (except for employees covered by a Collective Bargaining Agreement). As such, I understand that my employment with the Company is not for a specified term and is at the mutual consent of myself and the Company. Accordingly, either I or the Company may terminate that employment relationship "at-will," with or without cause, at any time, with or without notice.

If the terms and conditions of my employment are covered by a Collective Bargaining Agreement, any term or condition contained in the Collective Bargaining Agreement supersedes the terms and conditions contained in this Employee Handbook, in the event that they conflict.

I further understand that only the President of First Student has the authority to modify the at-will nature of the employment relationship and may do so only in a written agreement executed by the President and the employee.

Name (Please Print):

Location:

Position:

Signature:

Date:

(This form is to be signed, removed, and included in your personnel file.)

JA
000305

Useful Contact Information

Benefits (Group Associates) - Website	1.866.813.4778 www.groupassociates.com
Corporate Headquarters	1.866.244.6383 1.513.241.2200
Central Background Checking Unit (CBCU) - Email	1.513.419.2985 cbcquestions@firstgroup.com
Customer Services - Email	1.866.263.4513 customerservices@firstgroup.com
Direct Deposit Emergency Stop Fax	1.513.419.3308
Employee Assistance Program	1.800.323.0751
Ethics and Compliance Hotline - Email	1.877.322.5534 hotline@firstgroup.com
FirstGroup America Website	www.firstgroupamerica.com
Human Resources -- Corporate Office -- Cincinnati, OH East Region Human Resources Central Region Human Resources West Region Human Resources	1.513.419.8513 1.401.490.4752 1.513.419.3298 1.360.896.9500 x745
Media Inquiries - Email	1.513.362.4600 fgacommunications@firstgroup.com
Payroll Department	Contact Location Management
Safety -- East Central West	1.716.897.5704 1.412.431.6648 1.630.857.2428
Short/Long Term Disability (The Hartford)	1.800.445.9057
Verify Employment or Income (TALX) - Website (Employer Code = 12987)	1.800.367.2884 www.theworknumber.com
401(K) - Wells Fargo - Website	1.888.245.9798 www.wellsfargo.com



First  **Student**

600 Vine Street
Suite 1400
Cincinnati, OH 45202

1.800.844.5588

www.firststudentinc.com

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Date: August 1, 2012

Clint Bryant
1716 N. Charles St
Saginaw, MI 48602

Dear Clint Bryant

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

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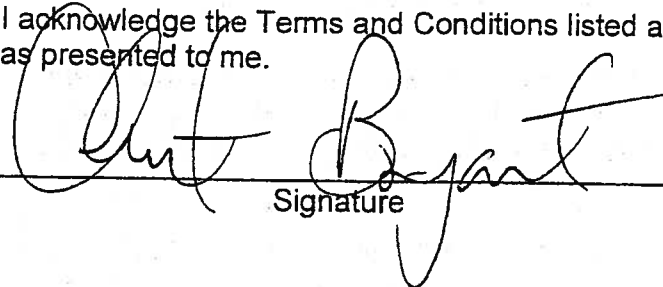
Page 2

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.



Signature



Date



Michael H. Bolton
Director, District 2

May 18, 2012

Mr. Dan Kinsley
Business Development Manager
First Student
960 Trombley Road
Grosse Pointe Park, MI 48230-1860

**RE: FIRST STUDENT - SAGINAW PUBLIC SCHOOLS LOCATION;
USW INTERNATIONAL UNION; AND ITS AFFILIATED LOCAL #8410-01**

Dear Mr. Kinsley:

Per our conversation earlier today, and your willingness to recognize the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), as the bargaining Representative for the Employees at the Saginaw Public Schools Location, please accept this notice, as required by law, that the USW desires to enter into negotiations for a first Contract.

Also, please be advised that pursuant to internal USW policy, there will be no agreement between USW and your Company until the Company is notified by our USW Staff Representative that the Contract in question has, under the foregoing, been approved by the International President. You may not rely upon any contrary representation concerning the effectiveness of any agreement, its submission to the membership for ratification, or the effectiveness of any such notification unless and until you are notified of such approval by the USW International President or his designee. Only the International President or his designee is authorized to communicate with you for this purpose.

We shall be pleased to meet and confer with you, at a mutually convenient date and time, for the purpose of negotiating the initial Agreement. In arranging conference dates, please notify all parties concerned.

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

District 2 Office: 1244A Midway Road, Menasha, WI 54952-1128 • 920-722-7630 • 920-722-7634 (Fax)

Northern Michigan Sub-Office: Suite #10; 503 N. Euclid Avenue; Bay City, MI 48706 • 989-667-0660 • 989-667-0923 (Fax)

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FIRST STUDENT - SAGINAW PUBLIC SCHOOLS LOCATION

May 18, 2012

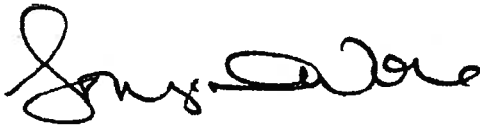
Page 2

Enclosed is an information request form that will need to be completed and returned prior to the beginning of negotiations.

We are hopeful that our collective bargaining relationship will be one of fairness to our members and in turn, we endeavor to provide a cooperative and meaningful collective bargaining relationship to those who seek it.

Very truly yours,

UNITED STEELWORKERS, AFL-CIO•CLC



Tonya DeVore
USW Staff Representative

TDD/tbb

Enclosures

cc: Mr. Doug Meek, Operations Manager – First Student
Federal Mediation and Conciliation Service
Michigan Employment Relations Commission
Clint Bryant, Unit President, USW Local #8410-01

CERTIFIED MAIL # 91 7108 2133 3936 9899 3703



Michael H. Bolton, District 2 Director
 USW International Union
 1244A Midway Road
 Menasha, WI 54952-1128
 920.722.7630
 920.722.7634 Fax

Initial CONTRACT NEGOTIATION INFORMATION REQUEST

COMPANY NAME: First Student – Saginaw Public Schools Location

LOCATION: 550 Millard Street; Saginaw, MI 48607-1140 LOCAL UNION NO: 8410-01

COMPANY CONTACT & TITLE: _____ CONTACT NO.: _____

This location's North American Industry Classification System (NAICS) listing _____

Total Number of Hourly Employees _____ The average hourly straight time rate: \$ _____

Total overtime hours worked by hourly employees in the preceding year _____

Incentive - Plant Average _____% Incentive Earnings added to Hourly Rate? Y _____ N _____

Health Insurance - Name of carrier/Third Party Administrator _____

Cost in cents per hour for the current health plan: Single \$ _____ / 2-Person \$ _____ / Family \$ _____

Monthly premium for health insurance coverage: Single, 2-Person, & Family:

Is Prescription coverage included in monthly premium? Y _____ N _____ N/A _____

(If NO, what are the monthly Prescription costs for: Single \$ _____ / 2-Person \$ _____ / Family \$ _____)

Is Vision coverage included in monthly premium? Y _____ N _____ N/A _____

(If NO, what are the monthly Vision Ins. costs for: Single \$ _____ / 2-Person \$ _____ / Family \$ _____)

Company Pays	Single	2-Person	Family	Employee Pays	Single	2-Person	Family
Plan 1	\$ _____	\$ _____	\$ _____	Plan 1	\$ _____	\$ _____	\$ _____
Plan 2	\$ _____	\$ _____	\$ _____	Plan 2	\$ _____	\$ _____	\$ _____

Dental Insurance - Name of carrier/Third Party Administrator _____

Cost in cents per hour for the current dental plan: Single \$ _____ / 2-Person \$ _____ / Family \$ _____

Monthly premium for dental insurance coverage: Single, 2-Person, & Family:

Company Pays	Single	2-Person	Family	Employee Pays	Single	2-Person	Family
Plan 1	\$ _____	\$ _____	\$ _____	Plan 1	\$ _____	\$ _____	\$ _____
Plan 2	\$ _____	\$ _____	\$ _____	Plan 2	\$ _____	\$ _____	\$ _____

Life / AD&D Insurance - Name of carrier/Third Party Administrator _____

Monthly cost per employee in cents per month for the current Life & AD&D coverage \$ _____

Life Coverage \$ _____ Company Pays \$ _____ Employee Pays \$ _____

AD&D Coverage \$ _____ Company Pays \$ _____ Employee Pays \$ _____

Monthly cost per employee for each \$1,000.00 increase to Life & AD&D coverage \$ _____

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Short-Term Disability Insurance - Name of carrier/Third Party Administrator _____

Monthly cost per employee for current A & S coverage \$ _____ Number of Weeks _____

A & S Coverage \$ _____ Company Pays \$ _____ Employee Pays \$ _____

Monthly cost per employee for each \$10.00 per week increase to A & S coverage \$ _____

TOTAL COST in cents per hour for all insurance premiums listed above \$ _____

Number of hours per month used to calculate cents per hour benefit costs _____

Pension Plan - Current cost in cents per hour for the pension plan \$ _____

Current Funding Level of Defined Benefit Pension Plan (DBP) _____ %

Amount of Contribution to DBP last year \$ _____ Do employees contribute? Y _____ N _____

Average Actual Contribution last 20 years \$ _____

Cost in cents per hour to increase pension benefit level \$1.00 past and future service \$ _____

Cost in cents per hour to change current pension plan to full at age (62) with no reductions \$ _____

Average age of all hourly employees _____

Cost of (\$.01) per hour \$ _____ Cost of (1%) per year \$ _____

Paper Industry Union – Management Pension Fund Cost of \$1.00 \$ _____

Current monthly benefit rate \$ _____

Shift differential for afternoon and night shift: Afternoon _____ / Night _____

Total number of hourly employees working swing shift _____

Total number of hourly employees working day shift _____

Total hours worked last contract per year _____

Total number of male & female hourly employees: Males _____ / Females _____

Number of people of color _____

Does your Company have a Political Action Committee (PAC)? _____

Please attach a copy of your most current EEO-1 report.

DeVore, Tonya

From: DeVore, Tonya
Sent: Monday, May 21, 2012 2:20 PM
To: Dan Kinsley (daniel.kinsley@firstgroup.com); Doug Meek (doug.meek@firstgroup.com)
Subject: Request to Bargain: Saginaw Public Schools Location
Follow Up Flag: Follow up
Flag Status: Purple
Attachments: FMCS form F-7 (5-18-12) (2).pdf; ~Letter to Dr Jenkins RE Transportation Outsourcing (5-18-12) (2).pdf; Contract Negot Info Req 5-18-12 (3).pdf

Gentlemen,

Please see the attached letter which has also been sent by US Certified mail. In order to make the transition as smooth as possible I would like to begin negotiations as soon as we can. Please contact me so we can secure some dates, at this point I have several dates available in the last week of May and June.

I look forward to working with you.

Thanks,

Tonya DeVore
Staff Representative

United Steelworkers, District 2
Suite #10 Euclid Plaza
503 North Euclid Avenue
Bay City, MI 48706

Cell: 269-718-9723
Fax: 269-792-3676

DeVore, Tonya

From: DeVore, Tonya
Sent: Wednesday, June 13, 2012 8:29 AM
To: audrey.adams@firstgroup.com
Subject: Transportation Unit: Contract Saginaw Public Schools
Follow Up Flag: Follow up
Flag Status: Purple
Attachments: Saginaw Public Schools Final CBA 2010-2012.doc

Audrey,

It was nice talking with you the other day. I am attaching the current contract for the transportation unit with Saginaw Public Schools and the USW. As we discussed I will call you some time after July 4 and look forward to working with you.

Tonya DeVore
Staff Representative

United Steelworkers, District 2
Suite #10 Euclid Plaza
503 North Euclid Avenue
Bay City, MI 48706

Cell: 269-718-9723
Fax: 269-792-3676

10/24/2012

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Michael H. Bolton
Director, District 2

August 29, 2012

Mr. John Kiraly
Location Manager
First Student – Saginaw Schools
1019 E. Genesee Avenue
Saginaw, MI 48607-1632

**RE: FIRST STUDENT - SAGINAW PUBLIC SCHOOLS LOCATION;
USW INTERNATIONAL UNION; AND ITS AFFILIATED LOCAL #8410-01**

Dear Mr. Kiraly:

It is my understanding that First Student has assumed a majority of the existing workforce from Saginaw Public Schools at your Saginaw Public Schools Location. These Employees were represented by the United Steelworkers International Union. The United Steelworkers are requesting at this time that you recognize the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), as the bargaining Representative for the Employees at the Saginaw Public Schools Location, please accept this notice, as required by law, that the USW desires to enter into negotiations for a first Contract.

Also, please be advised that pursuant to internal USW policy, there will be no agreement between USW and your Company until the Company is notified by our USW Staff Representative that the Contract in question has, under the foregoing, been approved by the International President. You may not rely upon any contrary representation concerning the effectiveness of any agreement, its submission to the membership for ratification, or the effectiveness of any such notification unless and until you are notified of such approval by the USW International President or his designee. Only the International President or his designee is authorized to communicate with you for this purpose.

GC14

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

District 2 Office: 1244A Midway Road, Menasha, WI 54952-1128 • 920-722-7630 • 920-722-7634 (Fax)

Northern Michigan Sub-Office: Suite #10; 503 N. Euclid Avenue; Bay City, MI 48706 • 989-667-0660 • 989-667-0923 (Fax) JA

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FIRST STUDENT - SAGINAW PUBLIC SCHOOLS LOCATION

August 29, 2012

Page 2

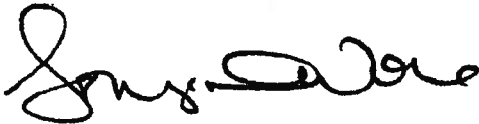
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Enclosed is an information request form that will need to be completed and returned prior to the beginning of negotiations.

We are hopeful that our collective bargaining relationship will be one of fairness to our members and in turn, we endeavor to provide a cooperative and meaningful collective bargaining relationship to those who seek it.

Very truly yours,

UNITED STEELWORKERS, AFL-CIO•CLC



Tonya DeVore
USW Staff Representative

TDD/tbb

Enclosures

cc: Federal Mediation and Conciliation Service
Michigan Employment Relations Commission
Clint Bryant, Unit President, USW Local #8410-01

CERTIFIED MAIL # 91 7108 2133 3936 9899 3840



Michael H. Bolton
Director, District 2

August 30, 2012

Ms. Kristen Huening
FirstGroup America
Corporate Headquarters
First Student at Saginaw Schools
600 Vine Street; Suite 1400
Cincinnati, OH 45202-2426

**RE: FIRST STUDENT - SAGINAW PUBLIC SCHOOLS LOCATION;
USW INTERNATIONAL UNION; AND ITS AFFILIATED LOCAL #8410-01**

Dear Ms. Huening:

It is my understanding that First Student has assumed a majority of the existing workforce from Saginaw Public Schools at your Saginaw Public Schools Location. These Employees were represented by the United Steelworkers International Union. The United Steelworkers are requesting at this time that you recognize the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), as the bargaining Representative for the Employees at the Saginaw Public Schools Location, please accept this notice, as required by law, that the USW desires to enter into negotiations for a first Contract.

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GC 15

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

District 2 Office: 1244A Midway Road, Menasha, WI 54952-1128 • 920-722-7630 • 920-722-7634 (Fax)

Northern Michigan Sub-Office: Suite #10; 503 N. Euclid Avenue; Bay City, MI 48706 • 989-667-0660 • 989-667-0923 (Fax) JA

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FIRST STUDENT - SAGINAW PUBLIC SCHOOLS LOCATION

August 30, 2012

Page 2

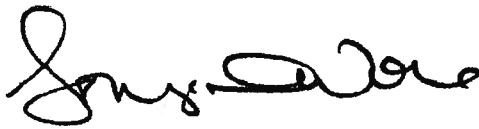
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Very truly yours,

UNITED STEELWORKERS, AFL-CIO•CLC



Tonya DeVore
USW Staff Representative

TDD/tbb

Enclosures

cc: Federal Mediation and Conciliation Service
Michigan Employment Relations Commission
Clint Bryant, Unit President, USW Local #8410-01

CERTIFIED MAIL # 91 7108 2133 3936 9899 3857

DeVore, Tonya

From: Walther, Raymond [Raymond.Walther@firstgroup.com]

Sent: Sunday, October 07, 2012 11:04 AM

To: DeVore, Tonya

Subject: Re: Saginaw Public Schools Location

Follow Up Flag: Follow up

Flag Status: Purple

Thanks, Tonya. Let's plan on Wednesday October 17 and Thursday October 18 to begin our negotiations.

-Raymond

Sent from my iPhone

On Oct 5, 2012, at 8:55 AM, "DeVore, Tonya" <tdevore@usw.org> wrote:

The 16th until 2:00 PM, the 17th all day and the 18th all day

From: Walther, Raymond [mailto:Raymond.Walther@firstgroup.com]

Sent: Friday, October 05, 2012 11:48 AM

To: DeVore, Tonya

Subject: Re: Saginaw Public Schools Location

Hi Tonya. Apologies for the confusion. I'm happy to begin negotiations on 10/15 regardless of whether you withdraw the charge. It's just that I see no point for the charge at this point. The Company has never refused to bargain with you.

Which days are you available the week of 10/15?

Raymond

Sent from my iPhone

On Oct 5, 2012, at 7:54 AM, "DeVore, Tonya" <tdevore@usw.org> wrote:

Mr. Walther,

I am disappointed that you are conditioning negotiations on the Union's withdrawal of the ULP charge, filed against First Student because it has failed to bargain with or recognize the union for several months, despite the Union's continuing demand for bargaining and recognition, first made on or around May 18, 2012. As you may know, First Student had an obligation to bargain with the Union over any changes to the bargaining unit's terms and conditions of employment following that demand, and once First Student had hired a substantial and

representative complement of its workforce, and more than half of that workforce was composed of former employees of Saginaw Public Schools. Instead, First Student made unlawful unilateral changes to those terms and conditions.

Of course, the Union wants to bargain. So, if you rescind your demand that the Union withdraw the ULP charge before First Student will bargain, I would be pleased to meet with you during the week of October 15.

Thank You,
Tonya

From: Walther, Raymond [<mailto:Raymond.Walther@firstgroup.com>]
Sent: Wednesday, October 03, 2012 7:56 AM
To: DeVore, Tonya
Subject: RE: Saginaw Public Schools Location

Tonya,

I left you another voice mail this morning. Could you please let me know today if the Union intends to begin negotiations on October 15, 2012 and drop the pending ULP charge? Thanks.

Raymond L. Walther
Labor Counsel
FirstGroup America, Inc.
600 Vine Street, Suite 1400
Cincinnati, OH 45202
(513) 419-8678 - Direct
(513) 317-4892 - Cell
(513) 672-2141 - Fax
Raymond.Walther@firstgroup.com

<image001.gif>

From: Walther, Raymond
Sent: Monday, October 01, 2012 3:19 PM
To: 'DeVore, Tonya'
Subject: RE: Saginaw Public Schools Location

Tonya,

I had some time free up in October if you would still like to start negotiations this month. If you are willing to withdraw the ULP charge, I can send you a recognition letter and we can get some dates scheduled. (Of course, if you are not willing to withdraw the ULP charge, then we will not be able to begin negotiations until the Board concludes its investigation.)

If you agree, we can schedule a couple dates the week of October 15th. Let me know how you would like to proceed.

Raymond L. Walther

Labor Counsel
FirstGroup America, Inc.
600 Vine Street, Suite 1400
Cincinnati, OH 45202
(513) 419-8678 - Direct
(513) 317-4892 - Cell
(513) 672-2141 - Fax
Raymond.Walther@firstgroup.com

<image001.gif>

From: Walther, Raymond
Sent: Monday, October 01, 2012 8:29 AM
To: 'DeVore, Tonya'
Subject: RE: Saginaw Public Schools Location

Tonya,

I just left you a voice mail responding to your email below. As you may know, the Company has no obligation to assume the terms and conditions of employment from the predecessor's CBA with the Union. I understand that you filed a ULP charge with the NLRB on this issue. The NLRB has requested my response as they conduct their investigation, and I will comply with that request.

Yours,

Raymond L. Walther

Labor Counsel
FirstGroup America, Inc.
600 Vine Street, Suite 1400
Cincinnati, OH 45202
(513) 419-8678 - Direct
(513) 317-4892 - Cell
(513) 672-2141 - Fax
Raymond.Walther@firstgroup.com

<image001.gif>

From: DeVore, Tonya [<mailto:tdevore@usw.org>]
Sent: Monday, October 01, 2012 12:59 AM
To: Walther, Raymond
Subject: RE: Saginaw Public Schools Location

The Union would be fine with waiting until November to begin negotiations so long as the Employer maintains the terms and conditions of Employment that were present with Saginaw Public Schools just prior to First Student assuming the Employees.

Please advise if First Student agrees to maintain the terms and conditions of Employment that were present with Saginaw Public Schools just prior to First Student assuming the Employees until such time as a new agreement is reached.

From: Walther, Raymond [<mailto:Raymond.Walther@firstgroup.com>]
Sent: Tuesday, September 25, 2012 8:26 PM
To: DeVore, Tonya
Cc: Adams, Audrey
Subject: RE: Saginaw Public Schools Location

Thanks for the reply, Tonya. Unfortunately, I am booked into November anyway. So it makes the most sense to start negotiations with Audrey once she's back.

Raymond L. Walther
Labor Counsel
FirstGroup America, Inc.
600 Vine Street, Suite 1400
Cincinnati, OH 45202
(513) 419-8678 - Direct
(513) 317-4892 - Cell
(513) 672-2141 - Fax
Raymond.Walther@firstgroup.com

<image001.gif>

From: DeVore, Tonya [<mailto:tdevore@usw.org>]
Sent: Tuesday, September 25, 2012 2:23 PM
To: Walther, Raymond
Subject: RE: Saginaw Public Schools Location

Mr. Walther,

Sorry I missed your call. Thanks for your message. I would like to start negotiations as soon as possible and preferably before November when Ms. Adams returns from maternity leave. Is there anyway we can begin negotiations before then?

From: Walther, Raymond [<mailto:Raymond.Walther@firstgroup.com>]
Sent: Friday, September 21, 2012 11:38 AM
To: DeVore, Tonya
Cc: Adams, Audrey
Subject: RE: Saginaw Public Schools Location

Tonya,

I left you a voice mail this morning. I am your contact while Audrey Adams is on maternity leave. But Audrey will be handling your negotiations. I have copied her so that you have each other's email address.

JA
000323

10/24/2012

Raymond L. Walther

Labor Counsel
FirstGroup America, Inc.
600 Vine Street, Suite 1400
Cincinnati, OH 45202
(513) 419-8678 - Direct
(513) 317-4892 - Cell
(513) 672-2141 - Fax
Raymond.Walther@firstgroup.com

<image001.gif>

From: Walther, Raymond

Sent: Tuesday, September 18, 2012 3:47 PM

To: 'DeVore, Tonya'

Subject: RE: Saginaw Public Schools Location

Thanks for the email, Tonya. I am in Georgia in negotiations at the moment. I'll call you when I get back to the office later this week.

Raymond L. Walther

Labor Counsel
FirstGroup America, Inc.
600 Vine Street, Suite 1400
Cincinnati, OH 45202
(513) 419-8678 - Direct
(513) 317-4892 - Cell
(513) 672-2141 - Fax
Raymond.Walther@firstgroup.com

<image001.gif>

From: DeVore, Tonya [<mailto:tdevore@usw.org>]

Sent: Tuesday, September 18, 2012 1:51 PM

To: Walther, Raymond

Subject: Saginaw Public Schools Location

Raymond,

Kristyn Huening gave your name as a contact for the Saginaw Public Schools Unit while Audrey Adams is out. Please give me a call as soon as possible regarding this unit.

Thanks,

Tonya DeVore
Staff Representative

United Steelworkers, District 2

JA
000324

Student Transportation Services Agreement
Between School District of the City of Saginaw and First Student, Inc.

This Student Transportation Services Agreement (hereafter referred to as the "Agreement") for student transportation (hereafter "Transportation") between The School District of the City of Saginaw (hereafter the "District") and First Student, Inc. (hereafter the "Provider") is entered into upon this 16th day of May in the year 2012.

1) General Provisions

- a) **Term:** Initial Term of Contract: July 1, 2012 to June 30, 2017, a period of five (5) years. Provider shall begin full service on or about July 1, 2012.
- b) **Option to Extend:** This Agreement can be extended by mutual agreement of the parties; terms and conditions to be negotiated.
- c) **Assignment:** Provider shall not assign or subcontract performance of this Agreement without the written consent of the District.
- d) **Modifications or Amendments:** The District may from time to time require modifications to the scope of services performed by the Provider. Such changes will be negotiated between the District and the Provider, and may result in Provider compensation increases or decreases if the changes are significant. Confirmed changes shall be incorporated by written amendments to the Agreement.
- e) **Termination for Cause:** The District or Contractor may terminate this Agreement for cause with 30 calendar days written notice. Cause is defined as the Provider's or District's breach of any term of this Agreement or its failure to achieve or comply with the Minimum Service Level Criteria for 30 calendar days after being notified in writing by the District of the failure or non-compliance matter. The District may also terminate this Agreement in the event of any of the following: (a) Provider becomes or is declared insolvent or unable to pay its debts as they become due; or (b) Provider makes an assignment for the benefit of its creditors; or (c) Provider files, or notifies District that it intends to file, a petition under any section or chapter of the United States Bankruptcy Code, as amended from time to time or under similar law or statute.
- f) **Termination without Cause:** Either party may terminate the Agreement without cause with 90 calendar days notice for any reason.
- g) **Force Majeure:** In the event the Provider is unable to provide transportation services as herein specified because of acts of God, fire, riot, war or civil commotion, strikes or labor disputes, except as described below, the District shall excuse the Provider from performance hereunder and shall have the right to take over the operation of such buses that the Provider is prevented from operating, with such employees or other persons as the District may deem appropriate, until the Provider is able to resume operation. Compensation will be tentatively terminated until Provider is able to resume legal operation of the contract. Any decisions regarding snow days will be made by the Superintendent of the School District of the City of Saginaw or his/her designee in conjunction with the Provider.

GC 17

2) Student Transportation Requirements**a) Legal Compliance**

- i) The Provider will comply with all applicable national, state, county, municipal, or local laws, statutes, ordinances, regulations, and/or prohibitions pertaining to providing Transportation for the District including compliance with all District policies, procedures or rules. District shall provide Provider with copies of all District policies, procedures and rules.
- ii) This compliance includes, but is not limited to, all aspects of the Transportation including, but not limited to, school buses and related vehicles, school bus equipment and maintenance, school bus licensing, employee training, employee certification, driver licensing, background checks per Michigan law, drug and alcohol testing, first aid certification, emergency preparedness environmental, fueling, traffic and parking ordinances, passenger safety, Department of Transportation regulations, non-discrimination laws, MIOSHA/OSHA, etc.
- iii) The Provider is fully responsible for having full knowledge of all such laws, statutes, ordinances, and Board of Education Policies, etc.

b) Transportation Service Programs & Types

- i) The Provider will provide, at a minimum, home to school and school to home service for all regular education and special needs students defined by the District as eligible for transportation throughout the term of this Agreement.
- ii) Unless specifically stated otherwise, the Provider will provide all supplemental transportation services such as mid-day runs, kindergarten, shuttles, activity buses, magnet, parochial, choice, late buses, extended day, vocational, and special program. The District may allow for the transportation of students to special or athletic events by parents or procure coach transportation services without Provider's authorization.
- iii) The District reserves the right at any time during the term of this Agreement to eliminate the transportation of secondary school students, and/or eliminate the transportation of elementary school students living more than one (1) mile from the school they attend, and/or otherwise decrease the amount of service to be provided under this Agreement.
- iv) District may increase or decrease services to be provided by Provider under this RFP, incorporated herein by reference and attachment. However, where such increases or decreases materially impact the service levels or equipment levels required of Provider under the assumed routes, schedules, and vehicle requirements contained in this RFP, the Provider may renegotiate rates with the District at which services are provided to cover increases or decreases in cost structure associated with such changes by District.
- v) Exhibit A provides details as to the majority of the supplemental services, but is not intended to be the complete listing of all such services.

c) Transportation Service Parameters

- i) The Provider will provide Transportation in conjunction with certain parameters established by the District. These include:
 - (1) School building instructional opening and release bell time schedule
 - (2) All District's school buildings
 - (3) Earliest bus arrival and latest bus departure times for each school or school program
 - (4) Maximum ride times by grade level or educational program
 - (5) Maximum riders per seat
 - (6) Assignment of monitors, aides, attendants, etc.
 - (7) Student pickup & drop off policies
 - (8) Special needs transportation policy
 - (9) Hours of operation
 - i) A list of the District's transportation parameters can be found in Exhibit A.
 - (10) On-board cameras

d) Routing Service Parameters

- i) Routing services are defined as providing routing software and hardware, (the district currently utilizes Transfinder software) designing bus routes, assigning riders, pairing or packaging bus routes, and/or optimizing accordingly.
- ii) The Provider is to operate the routing system and the District will provide the routing software and license.
- iii) District will maintain responsibility for the costs and fees associated with the Transfinder routing software, including licensing. Provider will be responsible for the labor related to routing, including but not limited to software maintenance and data back-up. At the termination of the contract, the District will maintain ownership of all software and possession of all student data. District is responsible for adding Provider as an authorized user under the District's software license only for the term of this Agreement and any successor agreement(s) between the parties.
- iv) Provider shall be primarily responsible for planning all routes, stops and schedules. Provider shall furnish District with a complete route map at least 10 calendar days prior to the first day of school of each school year. District and Provider will agree to a method of distribution and cost equally distributed for notifying students/parents of bus stop locations and pickup times at least one week in advance of the first day of school in a manner acceptable to the District.
- v) District shall furnish Provider with a list of names and addresses for all students not later than 45 days prior to the start of each school year, from which Provider will construct a complete route map in the timeline identified above. Provider shall use the route information provided by District to calculate the approximate time of pick up and drop off for each stop. Provider shall then provide a list of such times to District at least 10 calendar days prior to the start of school for each school year.

e) Safe Service

- i) Student, District employee, constituent, the public and Provider employee safety is paramount and will be the highest priority consideration with Transportation.
- ii) The Provider will not intentionally compromise safety in order to achieve any of the parameters previously referenced.
- iii) The Provider shall immediately inform the District of any District policies or practices that may conflict with safety prioritization.
- iv) The Provider, in good faith, shall not intentionally or recklessly perform an unsafe act to achieve contract or related performance criteria.

f) Minimum Service Level Criteria

District and Provider agree that certain reasonable performance expectations should be set for Provider's services, understanding that transportation is affected by many factors beyond Provider's control. On time performance criteria will take affect after the First Wednesday student count in October of each new school year to allow for the normal delays which occur as parents, students and staffs adjust to the new school year. Provider shall make reasonable efforts to maintain on time performance.

For the purposes of On Time Performance Measurement a *Route* will be defined as that individual segment of the driver's daily assignment beginning with the first student pickup and ending with the drop-off at the destination for that segment, either at the school or the designated bus stop. Each bus operates several routes per day. *On time* shall be defined as arrival at the final point of the individual route at or before the scheduled time. *Preventable Accident* shall be defined as a DOT reportable collision, reviewed by Provider's Accident Review Board and found to be preventable.

Inspection success rate at the beginning of the contract will not be measured until the first Michigan State Police inspection following 120 days of school operation to allow the provider sufficient time to bring all vehicles up to fleet standard. Approved reinspections within 24 hours of initial inspection will not be counted against the success rate.

- i) The Provider will monitor, account for and report to the District its success with fulfilling these minimum service criteria:
 - (1) AM On-time performance (routes \leq 10 minutes late): \geq 93%
 - (2) PM On-time performance (routes \leq 10 minutes late): \geq 93%
 - (3) Monthly On-time Performance (routes \leq 20 minutes late): \geq 99%
 - (4) Students left on bus unattended: 0
 - (5) Unauthorized student riders: 0
 - (6) Early Childhood Students left without custodial individual: 0
 - (7) Preventable Accidents: $<$ 1.5 per 100,000 miles operated (rolling 6 months)
 - (8) Monitors/attendants on all buses required by IEP: 100%
 - (9) Michigan State Police vehicle inspection success rate (score): 90+%

ii) This data will be provided to the District by the 15th of each month. The Provider will be deemed to be in non-compliance if the following events occur:

- (1) This data is not reported (no report) for two (2) consecutive months
- (2) This data is reported late for two (2) consecutive months
- (3) One or more criteria is not met for two (2) consecutive months; not limited to the same criteria item recurring.

iii) If a non-compliance situation occurs, the Provider is automatically on notice with or without formal notice from the District. A non-compliance condition must be cured within thirty (30) days of its initial occurrence; otherwise a Minimum Service Level Criteria Performance Penalty may be imposed.

g) Minimum Service Level Criteria Performance Penalty

i) The District may impose a Minimum Service Level Criteria Performance Penalty for non-compliance with the Minimum Service Level Criteria.

(1) The District may defer payment for individual non-compliance events as follows:

- (a) AM On-time performance (> 10 minutes late) \$50.00 per segment of the route per occurrence (am/pm)
- (b) PM On-time performance (> 10 minutes late) \$50.00 per segment of the route per occurrence (am/pm)
- (c) Monthly On-time Performance (> 20 minutes late) \$75.00 per occurrence
- (d) Students left on bus unattended: \$100.00 per occurrence per route
- (e) Unauthorized student riders: \$50.00
- (f) Early Childhood Students left without custodial individual: \$100.00
- (g) Preventable Accidents: \$100.00
- (h) Monitors/attendants on all buses required by IEP: \$50.00
- (i) Michigan State Police vehicle inspection success rate (score): \$100.00

(2) The number of monthly penalty instances is unlimited.

(3) If the non-performance factor is cured within 30 days of deferral, the deferred amount will be fully paid to the Provider.

(4) If the non-performance factor is not cured within 30 days of the deferral, the District may retain the penalty recovered without obligation to pay the Provider.

(5) Provider shall be notified in writing within 48 hours of the alleged performance deficiency so it may take steps to cure the deficiency or determine it was caused by factors outside Provider's control. Provider pays if they (the drivers) cause the delay.

(6) District will bill for such penalties within thirty-one (31) calendar days of its assessment based on the Provider's report or amended report or discovery of minimum service deficiency, whichever is later.

(7) Provider shall pay performance penalty within thirty (30) calendar days of receipt of invoice.

- (8) Exceptions (Acts of God) whereby performance deficiencies will not apply are:
- (a) Student medical situation(s);
 - (b) Driver/rider medical condition requiring immediate treatment;
 - (c) Medical emergency impacting rider/driver which is outside of driver's control; or
 - (d) Accident on the road
 - (e) Weather
 - (f) Train related delays
 - (g) Student behavior

3) Provider Accountabilities & Responsibilities

a) Appearance of Provider Resources

- i) The appearance of the Provider's vehicles and facilities will meet customary and reasonable standards for the industry and/or local area.
- ii) The appearance of the Provider's employees and work areas will meet the higher of the customary and reasonable standards for surrounding school district operations.
- iii) District and Provider shall confer on the dress code for Provider employees.

b) Provider Employee Conduct

- i) The conduct of Provider's employees will meet the standards specified by the District and Provider Policies. The Provider will be responsive to district input as to any personnel or conditions deemed to be insufficient to the District.
- ii) District shall have the right to request Contractor to remove from service to the District any employee who, in District's sole discretion, is deemed unsuitable for the performance of transportation services for District; provided that District shall make such request in writing, state the reasons therefore and include any supporting documentation, and provided further that such request does not violate applicable local, state or federal laws, rules or regulations.

c) Drivers

- i) Provider shall provide drivers for the buses used in providing the Service who are qualified and competent both in the operation of the buses that they drive and in dealing with and handling Students with whom they will interact. All drivers shall be employees of the Provider and not the District and the Provider retains the right to control the manner in which the drivers perform their duties under this Agreement. The District shall not be a co-employer or employer of Provider's employees for any reason. The Provider agrees its employees shall comply with all District policies, procedures and work rules which the Provider shall enforce.
- ii) Provider agrees to assure all drivers will be CDL (commercial driver's license) qualified as required by law. Each driver shall have a certified safe driving record. Provider shall maintain copies of Bureau of Motor Vehicles abstracts, conviction

record transcripts and references on all drivers, all of which shall be made available to District upon request. All new drivers shall attend the Provider basic CDL training that includes training in both defensive driving and pupil management. This pre-service training must also include approximately twelve (12) hours of classroom instruction by a regional instructor from Provider thereto. All drivers shall receive at least eight (8) hours of in-service training per year from Provider.

- iii) Provider shall not provide any drivers under this Agreement whom Provider knows to have seven (7) points currently on his/her record pursuant to the State of Michigan points system maintained by the Bureau of Motor Vehicles, PA 187.
- iv) Provider shall also not provide any drivers under this Agreement whom it knows or should have known, by complying with Michigan law and this Agreement, to have been convicted at any time of driving under the influence. All drivers shall be carefully selected as to character and ability and must pass all requirements and tests provided for by the Michigan Department of Education as well as comply with the requirements set forth in Michigan PA 187.
- v) Current School District employees shall be given the opportunity to apply for available positions. The Provider will be required to interview all current District employees, and current employees will be given preference in hiring. Provider agrees that when recruiting drivers for positions in the operation of the Agreement, it will emphasize its efforts to recruit from the City of Saginaw, Zilwaukee and Kochville. In the event that qualified and acceptable applicants are not forthcoming from the City of Saginaw, then the Provider may look elsewhere to fill vacant positions.
- vi) Provider shall conduct pre-employment drug testing and probable cause, post accident and random drug and alcohol testing of all safety employees as required by law and in compliance with U.S. Department of Transportation standards, as applicable.
- vii) Provider shall investigate all complaints of improper conduct on the part of any driver and will report the name of the complainant, the name of the employee, and the results of the investigation to the District. No person will be permitted to drive a bus if there is reason to believe that such person has engaged in any improper conduct with any Student. Provider shall take reasonable steps to prevent its employees from exposing any Student to impropriety of word or conduct. Provider shall not permit its drivers to smoke on the bus, to drink any intoxicating beverage, or be under the influence of drugs or alcohol while operating any bus. Provider shall regulate the use of prescription and non-prescription drugs which may impair the safe operation of the bus.
- viii) District may request that Provider remove or reassign a bus driver. Said request shall be made in writing. Provider shall promptly consider the District's request and notify the District of any action taken.
- ix) Drivers shall not be allowed the usage of cellular phone or other electronic devices, or participate in any other activity (ie: texting, eating, drinking a beverage, reading, etc.) that may distract from the safe operation of the vehicle.

d) Vehicles

- i) The Provider will purchase the District's existing bus fleet pursuant to the terms and conditions set forth in the Vehicle Purchase Agreement incorporated into this contract by reference and marked as Exhibit D. The purchase will occur and the Agreement will be executed on or about July 1, 2012 as agreed by the parties.
 - (1) The Provider will supply eight (8) new replacement vehicles in the first year of the Agreement.
 - (2) The Provider will supply three (3) new replacement vehicles each in years two through five of the Agreement.
 - (3) District will have the option of purchasing Provider's vehicles at the expiration of the Agreement's term as outlined above. Purchase-option will not be available for termination of Agreement by Provider for cause. The parties will come to a mutual agreement regarding the value of the vehicles based on an independent third party inspector's determination of the fair value less five percent (5%).
- ii) The Provider shall provide vehicle equipment typically used in providing pupil transportation service. This includes communication radios, wheelchair lift vehicles, wheelchair tie downs and similar equipment.
- iii) District will provide main radio system for Provider use over the life of the contract. District will be responsible for radio system fees, upgrades or narrowband costs, while Provider will be responsible for maintenance costs and radios.
- iv) Provider will supply digital cameras for one hundred percent (100%) of the vehicles. No system currently exists. Cameras shall not be capable of recording audio. If the District elects to enable audio recording on the buses the following paragraph shall apply: District shall be responsible for, and hold the Provider harmless from any liability arising from or in connection with audio recording on buses. Any vehicle that records audio on a bus under this agreement shall post a notice indicating that the bus is recording audio. Within 30 days of this Agreement, the District and Provider will also establish reasonable procedures for the review and maintenance of recordings.
- v) Provider will supply active GPS units on all buses and Provider will supply emergency cell phones for field trips. The District will authorize specific members of its staff to be provided access to the GPS system. Security procedures and levels of access will be set in agreement by both parties.
- vi) All busses shall have "Saginaw Public Schools" on the bus line.

e) Vehicle Maintenance

- i) The Provider shall maintain all equipment in accordance with Federal and State laws and industry accepted maintenance standards.
- ii) The Provider shall provide all aspects of the vehicle maintenance program, encompassing shop equipment, scheduling, technicians, parts, supplies, tires, service agreements, etc.
- iii) The Provider's maintenance program, scheduling and related processes will not negatively impact the quality of daily bus service.

f) Dry Runs

- i) The Provider will perform one "dry run" (running the buses at the scheduled times without the students) within the 10 days, but no later than three (3) business days, prior to the first day of school. This process will be coordinated with District officials who may monitor the process without restriction. The District and Provider will meet within 24 hours of the dry run day to assess outcome of the dry run.
- ii) The Provider will not be compensated for the pre-start up "dry run."
- iii) If the District deems an additional dry run to be necessary based upon the assessment, the District may require one partial or full dry run to be performed; in that event the District will be responsible for paying the Provider for 85% of the standard pricing per day per bus operated based upon the tiers of service, unless the additional dry run is necessary due to the Provider's fault in which case the Provider shall pay for all costs associated with the second and subsequent run(s).

g) Provider Fiscal Efficiency & Responsibility

- i) The Provider will make an ongoing good-faith effort to pair, combine, and/or package bus runs with buses in order to perform the Transportation with the minimal number of buses and drivers, doing so without jeopardizing safety or on-time performance.
- ii) The Provider will provide the District with a quarterly efficiency report. This report will list all buses scheduled for daily operation, and list the number of runs each bus is performing each morning and afternoon. Buses will be sorted by regular education and special needs service if possible. A brief explanation will be provided for any bus performing only a single run in the morning or afternoon.
- iii) The Provider shall immediately notify the District of any new program or services that are requested of the Provider by school officials or representatives. The Provider shall not fulfill unauthorized requests until authorized.
- iv) The Provider shall notify the District as school building or program times are contemplated, communicated or set that may conflict with efficient transportation service. The Provider shall assist the District upon request as to bell time changes under consideration.

h) Fuel

- i) The District will purchase and provide fuel for all District related transportation services.
- ii) If the Provider utilizes Provider owned buses for non-District transportation, the Provider will replenish the consumed fuel in the buses, or otherwise reimburse the District for such consumption. The Provider will notify the Superintendent or his/her designee should this occur.
- iii) Provider will supply the District with a report on the 15th of each month that will include the daily miles traveled for regular routes, mid-day routes, field and athletic trips and non-district trips for the prior month. The report will also include the monthly fuel usage.

i) Cooperation with District

- i) The Provider shall be responsive to the District's requests for unscheduled bus or rider related events and requests that may include:
 - (1) emergency preparedness
 - (2) ridership surveys or counts
 - (3) student discipline related communications or actions
 - (4) first day of school safety or security measures
 - (5) student or community safety matters
 - (6) student or community health matters
 - (7) vehicle condition inspections
 - (8) testifying on the District's behalf at no additional cost.

j) Student & School Notifications

- i) The Provider will be responsible for notifying students/parents of bus stop locations and pickup times at least one week in advance of the first day of school in a manner acceptable to the District.
- ii) The Provider will notify students/parents of subsequent changes to established bus routes in a manner acceptable to the District.
- iii) The Provider will provide sufficient data to the District to post bus route information for lookup on the web.
- iv) The Provider will keep the District and schools informed of pertinent bus route detail and related changes.
- v) Student data will be provided to the Provider no earlier than August 1 of each year.

k) Monitors (Bus Aides)

- i) Provider shall provide bus monitors, as determined by the District, who shall ride the buses used in providing the Service provided for hereunder. Such monitors shall be carefully selected as to character and ability, and shall be subject to approval of District as well as pass all criminal background checks required for Michigan School District Employees. District shall bear the cost of all monitors provided for hereunder. The District agrees to pay the Provider the total hourly rate cost, including benefits and taxes, for each monitor plus 10% for the recruiting and training of the monitors.
- ii) Monitors shall not be allowed the usage of cellular phone or other electronic devices that may distract from the safe operation of the vehicle or the safety of the passengers.

l) Other Provider Responsibilities

- i) Unless noted otherwise, the Provider will be responsible for performing the following services:
 - (1) vehicle maintenance
 - (2) check rides

- (3) road supervision
 - (4) towing activity
 - (5) trip scheduling
 - (6) activity trip
 - (7) school billing
 - (8) dispatch
 - (9) state and/or other mandated ridership data collection
 - (10) customer service
 - (11) temporary school startup
 - (12) customer service staffing
 - (13) recruiting and hiring
 - (14) accident investigation
 - (15) computer hardware and software maintenance
 - (16) disaster recovery service "off-site" routing software
 - (17) security of district data once transferred from District to Transportation
 - (18) replacement of or repair to District provided buildings and equipment damaged by the Provider
 - (19) the well-being and safety of the passengers
- ii) If other services or issues arise that are previously unaddressed the Provider will make a good faith effort to address or resolve such until the matter can be discussed with the District.
 - iii) The Provider shall immediately perform any unspecified service within reason that addresses a safety concern.

4) Compensation Basis -Bus Run & Route Packaging

- a) Run Grouping for Cost Effectiveness
 - i) The District shall compensate the Provider for performing different types or packages of Transportation services. Services may include regular school runs, vocational, after-school activity runs, field trips, and special activities. A single bus may accomplish one, two, or three runs both in the morning and in the afternoon. Runs or a group of runs (a route) similarly may be a combination of pickup and deliveries to more than one school. Thus, one bus may service more than one school but will only include students authorized by the Saginaw Public School District.
 - ii) Where buses have been grouped, it is for purposes of arriving at logical combinations of morning and afternoon runs. It is the intent of the District to have as many runs as possible grouped. The District will use the ability to group runs and combine runs as one of the key factors in assigning schools, type of service and runs to the Provider.
 - iii) Notwithstanding the foregoing, no student should be required to ride on a bus to or from any school for a period longer than sixty (60) consecutive minutes.
 - iv) If required by a student IEP, Special Needs Students shall be picked up and dropped off door to door.
 - v) Provider shall schedule and group runs in the most economically efficient manner to avoid excess cost

b) Mirrored Runs / Same Driver

- i) Routes will be paired as efficiently as possible with the morning and afternoon schools served being mirrored to the extent possible.
- ii) A bus driver should perform both the morning and afternoon package of runs with exceptions kept to an absolute minimum.

c) Other Specification and Definitions

- i) Provider and School District shall keep accurate records of all such usage and Provider's invoice shall reflect the actual number of days, tiers, type of service, and excess hourly time operated.
- ii) Changes in number of buses and changes in operating times shall be communicated to the Provider on a daily basis with effective dates clearly communicated.
- i) Unusual circumstances will be dealt with on an individual basis.

5) Pricing, Billing & Compensation**a) Pricing**

- i) The District shall compensate the Provider for performing different types of Transportation. The Provider shall use Exhibit B to establish all applicable rates. The menu of pricing packages shall include:
 - (1) double tier bus rates per day
 - (2) monitors/attendants per bus per day by tier
 - (3) recurring mid-day double tier runs
 - (4) peak/off-peak activity trip rate per hour
 - (5) other services and special equipment
- ii) Should any new service develop or an existing service change appreciably during the term of this Agreement, the District reserves the right to negotiate a fair and equitable rate for such changes. The service prices contained in Exhibit B shall serve as a basis for these price negotiations.
- iii) The District will compensate the Provider for a maximum of 180 school days. The Provider will not be compensated for snow days or other Acts of God days not required by the State of Michigan where mandated to make up the school day. Any decisions regarding snow days will be made by the Superintendent of the District or his/her designee in conjunction with the Provider.
- iv) The District generally operates a summer school program. Routes, scheduling, and service shall be provided by the Provider and will be negotiated each year for the service required based on the current year pricing.

b) Invoicing

- i) The Provider will submit invoices for the previous month's services before the 15th calendar day of the following month.
- ii) The invoice detail will include sufficient information to support the amounts billed, and to reconcile to the Contract.
- iii) The District shall pay any accurately prepared and submitted invoice within 30 calendar days of receipt. District reserves the right to withhold payment on invoice items that are subject to a good faith dispute, pending resolution.

c) Supplemental & Unscheduled Services and Costs

- i) The Provider will bear all costs associated with performing Transportation not specifically identified in this Agreement or in the Exhibits.
- ii) The Provider will bear all penalties, fines, damages, levies, taxes, etc. that may arise from performing Transportation.

6) Insurance & Performance Matters**a) Insurance Coverage's & Limits**

- i) The Provider will provide these insurance coverage's and these minimum limits with an "A-" or above rated insurance carrier for claims arising under the Agreement, unless otherwise specified in an Exhibit:
 - (1) Workers Compensation -\$1,000,000 or per state requirements if higher
 - (2) Automobile/Bus Liability -\$10,000,000 combined single limit
 - (3) Comprehensive General Liability -\$10,000,000 combined single limit
- ii) The Provider will designate the District as an additional insured. The Provider will annually provide the District an insurance certificate evidencing such coverage annually, before the policy expiration date.

b) Indemnification and Hold Harmless

- i) The Provider agrees to indemnify, defend and hold the District and its respective District members and employees harmless from any and all acts, events, outcomes, losses, liabilities, damages, claims, fines, penalties or legal rulings relating to the terms of this Agreement, the Transportation to be performed by the Provider or and act or omissions of Provider, its agents, employees, or invitees. Provider's indemnification and hold harmless obligations under this section shall not apply to the extent any loss, damages, suits, penalties, costs, liabilities and expenses arise from or are caused by the gross negligence or willful misconduct of the District, its agents or employees, routing and Provider's good faith adherence to district's directives and policies and procedures.
- ii) The District agrees to indemnify, defend and hold the Provider and its respective members and employees harmless from any and all acts, events, outcomes, losses,

liabilities, damages, claims, fines, penalties or legal rulings relating to the terms of this Agreement, acts or omissions of District, its agents, employees, or invitees. District's indemnification and hold harmless obligations under this section shall not apply to the extent any loss, damages, suits, penalties, costs, liabilities and expenses arise from or are caused by the gross negligence or willful misconduct of the Provider, its agents or employees, and District's good faith adherence to District's directives and policies and procedures.

c) Performance Bond

- i) The District reserves the right to demand a performance bond from the Provider at any time before or during the contract term for any reason and without explanation. If such demand is made:
 - (1) The Provider must obtain and maintain a performance bond issued by a bonding company authorized to do business in Michigan; failure to do so will result in the District proceeding with severing the Agreement for cause.
 - (2) The bond amount will be 20% of the first year's proposed base home-to-school, school to home transportation cost per the Provider's pricing submissions. In subsequent years, the performance bond amount will be 20% of the prior year's base home-to-school, school to home transportation costs.
 - (3) This bond will be provided to the District annually on or before the 15th of August.
 - (4) The cost of such performance bond will be fully reimbursed by the District to the Provider upon being provided evidence of surety from a reputable surety and payment by the Provider.
- ii) The District reserves the right to withdraw this requirement upon the annual anniversary of this Agreement and require the cost of the performance bond as specified in the proposal to be credited against the next monthly invoice.

d) Facility

- i) District agrees to provide the Provider an operations facility in the district for the operation of the transportation services. The facility at the minimum will have parking for the buses required by this Agreement as well as a building containing a service bay that can accommodate a full size bus, a manager's office and driver break area. District will provide all facility costs associated with the operation of such facility, including heating, electricity, local telephone service and communication expenses. Any long distance calls may be billed back to the provider.
- ii) Provider shall use the facility for the purpose of office administration, parking vehicles, fueling, and servicing during the term of this Agreement and in accordance with the **Facility Lease Agreement** attached hereto and incorporated herein by reference as Exhibit C, to be finalized by the parties within fifteen (15) days of the execution of this Agreement.

7) Exhibits To Contract

Exhibit A: District's Transportation System Parameters & Requirements

Exhibit B: Service Pricing per Pricing & Annual Cost Projections in the RFP

Exhibit C: Facility Lease Agreement

Exhibit D: Vehicle Purchase Agreement

8) Authority

Provider represents and warrants to the District that: (1) it has all requisite legal and corporate power to execute and deliver this Agreement; (2) it has taken all corporate action necessary for the authorization, execution and delivery of this Agreement; (3) this Agreement is a legal, valid and binding obligation of Provider, enforceable against Provider in accordance with the terms of this Agreement.

9) Non-Appropriation of Funds

The District represents (1) that it has adequate funds to meet its obligations under this Agreement during the current fiscal year; (2) that it intends to maintain this Agreement for the full period set forth herein and has no reason to believe that it will not have sufficient funds to enable it to make all payments due hereunder during such period; and (3) that it will use its best effort to obtain the appropriation of such funds during the term of this Agreement. However, it is understood that the availability of funds is contingent upon varied sources including tax levies and state appropriations. If the District fails, at any time, to have adequate funds to provide part or all of the Service (including, but not limited to a reduction in service) described in this Agreement, then the obligations under this Agreement are suspended in part or entirely as of the date the funding expires. The suspended obligations will become binding and enforceable from the date adequate funding is restored regardless of the source. In the event that any of the obligations under this Agreement are suspended, the term of this Agreement shall automatically be extended by the number of days for which such obligations were actually suspended under this Paragraph.

10) Assignment; No Subcontracting

The Services furnished hereunder are personal to the District, therefore, the Provider may not assign this Agreement, in whole or in part, to any person or entity without the District's express prior written consent. The Provider may not subcontract any of the Services without the District's prior written consent in each instance which consent shall not be unreasonably withheld or delayed. However, the Provider may assign this Agreement if the assignment is made to a parent or subsidiary company provided both the District and Provider are in agreement.

11) Independent Provider

The Provider will act solely as an independent Provider of the District under this Agreement and nothing contained herein will create or be construed as creating a partnership, joint venture, agency, or any similar relationship between the parties. Neither party will have, with respect to the other party or any of its employees, any obligation with respect to worker's compensation, social security, withholding tax, or any other expense customarily paid by an employer with respect to an employee.

12) Notices

All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and delivered personally to such party, or sent by recognized overnight courier service, or by first class U.S. mail, return receipt requested, postage prepaid, addressed to such party at the address for notices set forth on the signature page hereof or to such other address as either party may give to the other in writing for such purpose. All notices will be effective upon receipt.

13) Illegality

If any term or provision of this Agreement operates or would prospectively operate to invalidate this Agreement in whole or in part, then such term or provision only will be void to the extent of such invalidity, and the remainder of this Agreement will remain in full force and effect.

14) Waiver

The waiver by a party of any breach of this Agreement by the other party in a particular instance will not operate as a waiver of subsequent breaches of the same or different kind. The failure of a party to exercise any rights under this Agreement in a particular instance will not operate as a waiver of such party's right to exercise the same or different rights in subsequent instances.

15) Entire Agreement

This Agreement constitutes the entire agreement between the parties, and supersedes any prior written or oral understandings, with respect to the subject matter hereof.

16) Time

Time is of the essence in the Provider's performance of all obligations under the Agreement.

17) No Reliance; Amendments

Each party acknowledges and agrees that no representative of the other party has the

authority to make any representations, statements or promises in addition to or in any way different than those contained in this Agreement, and that it is not entering into this Agreement in reliance upon any representation, statement or promise of the other party except as expressly stated herein. No changes, amendments or clarifications of any of the terms of this Agreement will be valid or effective unless in writing and signed by an authorized representative of the party to be bound.

18) Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument

19) Governing Law; Limitations

This Agreement, all rights and obligations between the District and the Provider, and any and all claims arising out of or relating to the subject matter of this Agreement or the Contract Documents (including all tort claims), shall be governed by the laws of the State of Michigan, without regard to its conflict of laws principles.

20) Binding Agreement

The District and Provider have agreed to the terms of this Agreement as of this 16th day of May, 2012.

**THE SCHOOL DISTRICT OF
THE CITY OF SAGINAW**

By: Carlton D. Jenkins, Ph.D.
Superintendent of Schools

Date: May 24, 2012

FIRST STUDENT, INC.

By: Lucretia Burtch
President

Date: 1 June 2012

Exhibit A (RFP Exhibit 3) to Transportation Services Agreement**Saginaw Public Schools - Transportation System Parameters****1) Educational Programs Served**

- a) Regular Home to School Transportation Service
- b) Special Education Service
- c) Saginaw Career Complex
- d) Mid-Days
- e) Shuttles
- f) Private & Parochial Schools

2) Supplemental Equipment Requirements

- a) All buses will be marked with "Saginaw Public Schools"
- b) All buses will be equipped with two way radios
- c) GPS system needed for field trips.
- d) All buses will be equipped with digital video cameras.
- e) Routing Software

3) Transportation & Routing Parameters**a) Eligibility & Routing**

- i) State of Michigan regulations require transportation for those students in grades K-8 who reside more than 1.5 miles from school. –The District currently provides transportation to all secondary students 1.5 miles from their home school and all elementary students 1.0 miles from their home school.
- ii) Students may not walk more than one-half (1/2) mile from their residence to a bus stop. This one-half mile walk does NOT translate into a student being ineligible for transportation if the student lives within one-half mile of his/her school.
- iii) Students must be at bus stops at least five (5 minutes) before their assigned bus stop time.
- iv) Although students will generally be assigned to the nearest school, there will be exceptions and the Provider will provide these students transportation.
- v) Buses will not enter gated communities or cul-de-sacs, unless specifically authorized by the District.

b) Bus Capacities

- i) Actual student bus ridership will not regularly exceed:
 - (1) 2 per seat for middle, and high school buses
 - (2) 2.5 per seat for K-5s, K-6s, and K-8s
- ii) Assigned load counts should be made based upon presumed absenteeism or alternative transportation, particularly for high school students.

c) Special Education Parameters

- i) Transportation will be performed in compliance with the student's IEP, including home pickup if required.

ii) Special needs capacities will vary per program, but will not be overbooked as to load capacity.

iii) Monitors (Bus Aides) will be provided if the student's IEP requires.

d) Buses Added / Deleted

All bus additions and deletions must be approved by the Director of Facility Services or his/her designee before implementing such change.

e) Student Discipline

i) The Provider shall cooperate with all District regulations governing the conduct of school bus operations and the behavior and discipline of Students transported on school buses. Actual student discipline will take place at the school of record.

ii) The Provider shall provide a program for the training in handling student discipline in accordance with the provisions of Michigan law.

f) Adverse Weather

i) Provider shall notify the Superintendent or his/her designee by 5:00 AM of any adverse weather or road conditions that would have a bearing on the decision to close or delay school.

ii) The decision to close or delay the opening of school is within the sole discretion of the Superintendent or his/her designee.

iii) The Provider shall adjust the transportation schedule to provide transportation within a reasonable time after being notified of the Superintendent's decision to close or delay the opening of any school building at any time whether before or during the school day as a result of inclement weather or other circumstances.

g) Safety Training

Provider agrees to provide student safety training to kindergarten through third grade on an annual basis. Such training will be coordinated with the District for location and time of assembly.

h) Transportation Service Hours

On regular school days a Provider transportation representative must be available to respond to school official and parent phone calls between the hours of 6:00 a.m. to 6:00 p.m.

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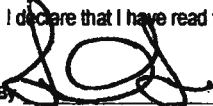
INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case
07-CA-089760Date Filed
9-21-12

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer First Group America	b. Tel. No. 989-399-6500
	c. Cell No.
	f. Fax No.
d. Address (Street, city, state, and ZIP code) First Student 1019 East Genesee Avenue Saginaw, MI 48607	e. Employer Representative John Kiraly, Location Manager
	g. e-Mail
	h. Number of workers employed 60
i. Type of Establishment (factory, mine, wholesaler, etc.) Trasportation Services Contractor	j. Identify principal product or service Bus Transportation
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)(5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Beginning within the 10(b) period and continuing to date, the Company unlawfully refused to recognize and bargain with the Charging Party, upon the Charging Party's request, despite the fact that the Company's business is a substantial continuity of the business of the predecessor, and despite the fact that a majority and a substantial and representative complement of the Company's employees were employees of the predecessor. Further, within the 10(b) period and continuing to date, First Student ("Company") unlawfully refused to recognize and bargain with the Charging Party over initial terms and conditions of employment of the bargaining unit, despite the Company's having been perfectly clear that it intended to hire enough of its predecessor's employees to make it a successor.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) United Steelworkers Local 9036	
4a. Address (Street and number, city, state, and ZIP code) 12687 Goldenrod Ct Wayland, MI 49348	4b. Tel. No. 269-718-9723 4c. Cell No. 269-718-9723 4d. Fax No. 269-792-3676 4e. e-Mail tdevore@usw.org
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) United Steelworkers	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. By:  Tonya DeVore, Staff Rep (Signature of representative or person making charge) (Print/type name and title or office, if any)	
Tel. No. 269-718-9723 Office, if any, Cell No. Fax No. 269-792-3676 e-Mail tdevore@usw.org	
Address 12687 Goldenrod Ct, Wayland, MI 49348 9/12/12 (date)	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

JA
00034418

From: Kinsley, Daniel

Sent: Friday, February 03, 2012 3:32 PM

To: cjenkins@spsd.net; 'PEATROSS, KELLEY'

Cc: Woods, Jim

Subject: First Student Revised Proposal

Attachments: Letter and Cost Comparison.pdf; Saginaw Public Schools - First Student Transition Plan FINAL_.pdf; First Word 9-2011 79528.5.pdf; Saginaw Cost Comparison 2-3-12 (3).xlsx

Dr. Jenkins and Dr. Peatross,

Good afternoon. I have attached our response to the latest request for a revised proposal for transportation services to Saginaw Public Schools. Please see attached and please let me know if there is anything questions. I believe you will find this to speak directly to your goals at the district. I look forward to hearing back.

Kindest Regards,

Dan Kinsley

Business Development Manager

First Student

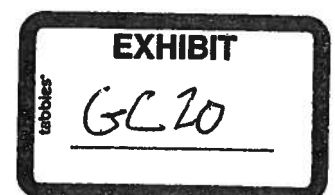
960 Trombley Road

Grosse Pointe, Michigan 48230

(313) 926-6991 direct

(248) 277-8295 cell

(313)447-2523 fax





960 Trombley Road
Grosse Pointe Park, MI 48230
(313) 926-6991

February 2, 2012

Saginaw Public Schools
Dr. Carlton Jenkins, Superintendent
550 Millard Road
Saginaw, MI 48607

Dear Dr. Jenkins,

Thank you for the opportunity to meet with you, Dr. Peatross and Mr. Bradley to discuss a student transportation services partnership between Saginaw Public Schools and First Student. We believe that your vision – a model of excellence for your District – matches First Student's mandate to provide safe, efficient and cost-effective transportation to our partners across the country.

At the end of our visit, you challenged us to consider our involvement with Saginaw Public Schools and to review our pricing. You asked us to return to you a proposition which expands on our proposed community involvement and clearly outlines transition plan. Finally, you challenged us to improve the fleet purchase price we offered in our initial proposal. We appreciate the challenge and we have responded with a solution which brings significant value to the District.

In our original proposal we outlined the capabilities, high standards and experience of First Student. This underscores our ability to deliver high quality, safe student transportation services. In this proposition, we refine and expand upon our service offerings as they specifically apply to your school district and our partnership.

Outsourcing Transition Plan

In the attached OUTSOURCING TRANSITION PLAN FOR SAGINAW PUBLIC SCHOOLS, we outline the key areas of our plan to convert the current in-house operation to contracted service. Our plan begins with a Communications and Community Relations approach which will keep the Saginaw community informed regarding all aspects of the transition process. We understand that people have many questions and clear, frequent communication is an important part of ensuring our successful partnership.

Several elements of our Communications and Community Relations section describe ways in which we will reach out and engage in the community. We are especially excited to offer a \$5,000 *StudentsFirst* annual scholarship program. Or we can contribute to your existing program, if that is preferable. Qualification and distribution of the scholarship program would be defined by your office or the Board and scholarships awarded annually to a graduating senior at the High School.

The Communications and Community Relations approach further describes how our staff will engage with local schools to build relationships and share our focus on student safety. One way we measure our success is when employees of the school system see our employees as peers and not as an external vendor.

The transition plan then addresses the recruiting, hiring and training of the current employees. It is important to note that we still plan to grandfather the current employee's seniority and hourly wages as well as provide an enhanced health plan as described below.

The plan next shows how our in-house routing experts, First Planning Solutions, will conduct Route Planning and Optimization for the district. Finally the plan discusses transitioning the maintenance department, fleet and facility. We end the plan with a few requests for the District. A partnership is a two-way street, of course, so we wanted to let you know some of our expectations —expectations that will hopefully make the transition a smooth and effortless process.

Start Date and Contract Term

As we considered what start date and contract term would deliver the best value for Saginaw Public Schools while allowing us sufficient time to fully implement the OUTSOURCING TRANSITION PLAN FOR SAGINAW PUBLIC SCHOOLS, we decided on a five year term, beginning July 1, 2012. This allows us more time over which to spread start-up costs and therefore control the daily bus charges per route. A five-year term also provides stability and continuity for the partnership. Contractually, the District will always have the flexibility to cancel for lack of funding or given 60 days notice (Termination for Convenience.)

Proposal Revisions and Clarifications

We have included two pricing scenarios for your review. . Both scenarios provide for the replacement of older District vehicles with 20 new buses purchased by First Student as well as the Driver & Monitor health care plan improvement previously requested by the District. Should the District choose the Fleet Purchase pricing scenario, then the Fleet Purchase and Buy Back Agreement provision would apply.

New Buses

We have included a total of 20 new buses throughout the duration of the contract in both scenarios. Eight (8) new buses are provided in year one and three (3) new buses are provided in years two through five. If First Student provides these replacements, the District will find relief from having to budget future bus replacements. New buses improve the appearance and reliability of the fleet and reduce annual maintenance costs.

The estimated capital avoidance of these 20 new replacement buses is \$1,600,000 over the five year term.

Health Benefits

In previous discussions with the District, you requested that we improve the basic health care offering included in our initial proposal. Out of several plans which we offer to employees, the District selected our *First Consumer* plan as being most similar to the District's current offering. We have included the cost of that plan coverage for the 17 drivers and monitors currently being covered by the District in each of the pricing proposals. The plan will require a 20% employee contribution toward premiums at the employee-only level.

Fleet Purchase and Buy Back Agreement

First Student offers to purchase the entire Saginaw Public Schools' fleet for \$245,357. This will provide the District an influx of cash to re-purpose into the classroom or wherever it is needed most.

We propose amending the contract language with a Fleet Buy-Back provision that would allow the District the exclusive option to buy back the fleet at the end of the contract. The purchase price would be set by agreement of two independent appraisers selected individually by Saginaw Public Schools and First Student. We will further discount the appraisers' value by five percent (5%).

Pricing Proposals

In addition to providing unit and annual pricing, we have attempted to demonstrate the savings potential of each scenario. This calculation requires a projection of the expenses that the district would retain in each scenario. Because we do not have access to complete information on the District's budget and expenses, certain assumptions had to be made as listed at the bottom of each sheet.

Option 1) District Fleet / First Student Provides Replacements:

In this scenario, Saginaw Public Schools would initially retain ownership of the fleet. First Student would maintain and operate the fleet and provide all future replacements. The replacement schedule would be as described above with eight (8) new buses immediately in year one. The daily route charge reflects the lower cost of operation for those routes operated with a District owned vehicle. A contractor bus charge is applied to each route operated with a First Student provided vehicle. Our estimated cost savings as calculated in the attached pricing proposal is \$2,454,740 or 17.5% over the contract term.

All unit costs provided in this proposal increase by 2.5% each year. However, the overall contracted cost increases approximately 3.4% due to the additional contractor bus charge for the addition of new vehicles each year. Note that the first year cost under this scenario is significantly less than the Fleet Purchase scenario.

Option 2) Fleet Purchase:

In the Fleet Purchase scenario, First Student would buy the entire district at the beginning of the contract for \$245,357. Under this scenario we service Saginaw Public schools with a mixture of the fleet purchased from the District and new vehicles as described above. The higher daily route charge for this scenario includes the cost of providing the bus and therefore there is no separate contractor bus charge. Our estimated cost savings as calculated in the attached pricing proposal is \$2,458,354 or 17.6% over the duration of the initial contract term.

All unit costs in this scenario increase by 2.5% each year.

We recommend the Fleet Purchase scenario because it allows Saginaw Public Schools to focus on its core mission of educating students and have no concern for fleet replacement or the liabilities that come with fleet ownership.

Conclusion

We anticipate that you will appreciate the refinements made to our prior proposal. These refinements include a greater fleet purchase offer and more new equipment in year one. These items enhance our previous proposal which includes industry leading safety and training programs, GPS and Video Cameras on all buses and a systematic, proven approach to student transportation.

Our Transition Plan demonstrates our desire and ability to be a partner with Saginaw Public Schools and the Saginaw community. We also are good listeners and have the flexibility to adjust to the changing needs of our customers. We hope you will give us feedback on any item that does not fully meet your expectations.

Please allow us the opportunity to discuss further at your earliest convenience.

Regards,



Dan Kinsley

Business Development Manager

FIRST STUDENT OUTSOURCING TRANSITION PLAN FOR SAGINAW PUBLIC SCHOOLS



Purpose

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First Student's Outsourcing Transition Plan, customized to meet the needs of Saginaw Public Schools, provides a comprehensive, cross-functional approach to transition the student transportation operation from District operated to contracted services. Using this model, we will achieve a high level of service, exceed expectations and fully communicate both the plan and the results to internal and external stakeholders.

It is normal that there will be resistance to change within the District and the community. Our intent is to partner with you to clearly communicate, gain support and respond to questions and concerns while quickly identifying and addressing obstacles to success.

Transition Overview

.....

Implementing new service involves a transition process that touches on many levels. To help manage the transition process, we have developed a comprehensive Start-up Manual that we use as a guide and reference. This manual provides check-off lists and suggested actions to accomplish each of our objectives, resulting in the start of successful, well-organized operation that adheres to the high standards of First Student, always remaining within established budget guidelines.

In addition to the Start-up Manual that First Student uses as a basic implementation model, we will develop a specific plan for start-up at Saginaw Public Schools. We will customize the plan to meet your needs, incorporating the number and type of schools, number and type of vehicles, extracurricular transportation needs and/or special programs and other unique needs of the District. We will meet with District representatives immediately after contract award to review and modify this plan cooperatively. We work to ensure the District priorities and concerns are addressed well in advance and are documented within the plan.

The major components of the Saginaw Public Schools Transition Plan are as follows:

- Communication and Community Relations
- Hiring, Training and Orientation of Employees
- Route planning and Optimization
- Fleet, Maintenance and Equipment
- Facility and IT Infrastructure

FIRST STUDENT OUTSOURCING TRANSITION PLAN FOR SAGINAW PUBLIC SCHOOLS



Transition Team

First Student's Transition Team includes our Region Management Group, the Business Development Manager, Safety Directors, Corporate Support and select Operations team members from other First Student Michigan locations. The Team meets on a weekly basis to update progress on the start-up plan checklist. Individuals are assigned and held accountable for each area of need, such as driver recruiting, safety and training, new bus delivery and in-service, facility preparation, safety and environmental audits, etc.

Key Performance Indicators are set and measured weekly. The Business Development Manager and Area General Manager maintain responsibility for communication with the customer as well as assuring all tasks on the start-up check list are completed by their target dates. Weekly meetings are held with the customer to update them on progress. Region Management attends monthly School Board meetings, as requested, to update the board and the public on progress, answer questions and receive feedback.

Communication and Community Relations Plan

Regular communication will be a critical feature of a successful Transition Plan. Weekly meetings with the District's key staff members will be used to update all team members with the progress toward achieving previously agreed upon goals. It will also be important to communicate that progress to other members of the school system and the community.

First Student's Public Relations Team will coordinate with Saginaw Public Schools and the local First Student Operations team to provide positive, mission focused communication to all stakeholders. First Student's team will meet with the district to define the appropriate internal and external targets and agree on the communication timing and materials to be utilized.

Partnering with school districts is a part of our culture. In the attached "*Back to School*" edition of our **FirstWord** publication you will see several illustrations of First Student partnerships in action. Just take a look at **Our Partners in the Spotlight** on page 3 and the **CommunityFirst** section on pages 12 and 13 for some real life examples of First Student customers and communities.

Some of the possible community relations opportunities are:

- Initial Press Release
 - Announce the award of contract and the establishment of the partnership
 - Define the expected public benefit of the award
 - Communicate First Student's alignment with the goals of the district

FIRST STUDENT OUTSOURCING TRANSITION PLAN FOR SAGINAW PUBLIC SCHOOLS



- FAQ developed jointly by Saginaw Public Schools and First Student for distribution to community and schools.
- Operations Team to attend PTA/PTO Meetings
 - First Student will make a short presentation to parents/teachers/community regarding the company, safety focus, what to expect and provide contact information.
 - Bring a former district driver to demonstrate hiring of current experienced staff.
- Annual Kindergarten Orientation
 - First Student will bring a driver and a brand new bus to the schools for Kindergarten orientation.
 - As part of the orientation, parents and kindergartners will get on the buses for a firsthand experience. The driver will take the group on a short ride around the block and provide a brief demonstration of the safety equipment on each bus.
 - Issue a press release and invite news media for pictures of the students with the new bus. The partnership will provide a quote from the Superintendent and our Region Manager regarding the community benefits, anticipated start-up and cost savings.
- Operations Team visits each school in the District
 - An information packet is provided for each principal and vice principal (and secretary).
 - Distribute "Back to School" safety communications for students. (Samples attached)
 - Giveaways provided for elementary students. These include rulers, safety coloring books, pens, etc.
- Operations Team attends all board meetings
 - First Student will provide a short presentation on start-up progress and key performance indicators; drivers hired, district activities, new buses delivered and placed in service.
- Add appropriate Saginaw Public Schools personnel to distribution of **FirstWord**, a publication for First Student customers. Submit an article related to the partnership for inclusion in **FirstWord**. (Sample attached)
- News article/press release for annual start-up; safety related – 10 rules for bus riders, etc.
- Press Release for National School Bus Safety Week, October 15-19, 2012. Poster contest in coordination with NAPT (NAPTOnline.org)
- \$5,000 Annual "*Students First*" scholarship money; Superintendent and School Board decide how winners are selected.
- "*Stuff the Bus*" campaigns - First Student provides a bus with appropriate signage to be "*stuffed*" with supplies for less fortunate community members. Options for the campaign are backpacks and school supplies in summer or non-perishables food supplies for Thanksgiving. The bus can be parked at schools, shopping areas or other highly visible places to receive public donations.

FIRST STUDENT OUTSOURCING TRANSITION PLAN FOR SAGINAW PUBLIC SCHOOLS



Employee Hiring, Training and Orientation Plan

Immediately after notice of award, we will begin contacting all of the current drivers, aides, technicians and other staff providing student transportation services to the District. We will hold meetings with each employee group to clearly outline our offer of employment, answer questions and lay out the steps necessary to gain employment with First Student. We will use local offices to facilitate meetings and to accommodate driver recruiting, employee screening and training and start-up planning. It is critical that we quickly provide clear communication to all current District employees to keep them informed and comfortable with the transition.

Regional and Corporate support staff provide on-site training for new employees. Full time management personnel receive Supervision training. All employees attend our Injury Prevention Program and "Kickoff" In-service training event in August. District Personnel are invited to attend this annual in-service to address any issues or changes for the new school year.

In partnership with the District, we will formalize an implementation schedule according to the agreed-upon start of service date.

Key Employee Events

- General Meeting with all Drivers and Aides as early as possible after the decision is made.
- Full Time Staff Meeting
- Driver & Aide interview and hiring for Current District Employees – 30 days minimum:
 - Application/Interviews
 - State and Federal Background checks/First Student background checks (USIS)
 - Motor Vehicle Record Check
 - Drug Testing & Physical Exams
 - Classroom and Behind the Wheel Training
 - Physical Dexterity Testing
 - Orientation
- Technicians – 30 days for hiring, background checks, training and orientation.
- Full Time Staff & Shop Supervision – 30 days for hiring, background checks, training and orientation.
- Recruit, Train, Hire additional drivers & staff
- Mailings and additional communication
- Setup permanent compliance and personnel files (DOT/Training/Background/Medical/I-9)

FIRST STUDENT OUTSOURCING TRANSITION PLAN FOR SAGINAW PUBLIC SCHOOLS



Route Planning and Optimization

Our in-house routing specialists, First Planning Solutions (FPS), will meet with Saginaw Public Schools' staff early on to evaluate the current routing system and agree upon any needed software or hardware updates or upgrades. FPS will initiate appropriate IS policy for the system including security measures and data backup procedures. They will coordinate with the District where the routing database will be stored and agree upon a data-access plan for authorized personnel.

FPS will provide training as needed for our local staff and any designated Saginaw Public Schools personnel who will have access to the system. As outlined in the schedule below, they will coordinate the updating of the student data in the routing system, the compilation of the new route sets and testing of any modified routes. They will also coordinate the timing of mailings and publication of bus routes to schools, students and parents with Saginaw Public Schools and the local operations team.

High Level Routing and Startup Timeline

Task	Owner	Begin	End	Comment
Obtain prior year student information	FS/SPS	6/1/12	6/30/12	Dependent on when SD rolls up student data
Process students / Assign eligible students to closest stop / Create new stops where necessary / Eliminate unnecessary bus stops	FS	7/1/12	7/10/12	
Create optimal bus runs based on stops with students assigned	FS	7/11/12	7/25/12	
Create routes with optimal run pairings	FS	7/26/12	7/27/12	
Dry run routes	FS	7/28/12	8/1/12	
Make route changes based on driver and supervisor feedback	FS	8/2/12	8/7/12	
Re-Run modified routes	FS	8/8/12	8/10/12	
Send finalized routes to district for approval	FS/SPS	8/11/12	8/11/12	
Execute communications plan for student, parents and schools.	FS/SPS	8/12/12	8/23/12	Predetermined combination of postings at schools, publications, mailings or web.
First Day of School	FS/SPS	8/28/12		

FIRST STUDENT OUTSOURCING TRANSITION PLAN FOR SAGINAW PUBLIC SCHOOLS



Fleet, Maintenance and Equipment Plan

In addition to hiring qualified technicians, many important milestones are necessary for the takeover of maintenance responsibilities. All of the vehicles for which we take responsibility will be entered into our state of the art computerized maintenance system called VMS. All vehicles, including any non-yellow support vehicles, will be placed on a scheduled Preventive Maintenance (PM) plan which is monitored by region and corporate staff. Local maintenance personnel are expected to maintain 100% on time performance for PMs.

Vehicle Related Events

- Fleet Inspection
- Vehicle Purchase Agreement finalized (if appropriate)
- Title Transfer/Registration/Tags
- In-service/PM
- Maintenance Files/VMS Installation
- State Inspection – after fleet takeover.
- Supplemental equipment installation
 - Child Checkmate/Theftmate
 - Crossing Gates
 - Zonar GPS

Facility and IT Infrastructure Plan

Under the agreement, First Student will take responsibility for the current student transportation facilities and maintenance garage. Although we will have no lease payment to Saginaw Public Schools for the use of this facility, we do have responsibility to make sure that the facility is properly equipped and that we maintain it as if it were our own. We will utilize Strata, our environmental contractor, to do a Phase I assessment of the facility with documentation so that we return the facility to you in similar or better condition. Strata will also assist us as we customize our housekeeping and environmental procedures to make sure that we operate responsibly.

Facility Related Events

- Facility Inspection/Assessment (Maintenance/IT/OSHA/Safety)
- Tool/Shop Equipment Inventory
- Office Equipment Inventory
- Parts inventory & Purchase

FIRST STUDENT OUTSOURCING TRANSITION PLAN FOR SAGINAW PUBLIC SCHOOLS



- Strata Environmental Phase 1 Inspection
- IT Infrastructure/Telecom installation as needed

..... Planning Ahead

As we look forward to starting a partnership with Saginaw Public Schools, we would like to request some items that will make the transition go smoothly and quickly. Some of these items may not be available to us until after the Board officially votes to award a contract, however, if your staff could begin planning for these items we will get a head start on the process.

Needed from Saginaw Public Schools:

- Updated Driver & Aide List – Name, Title, Address, Phone, Seniority Date, Wage Rate
 - Retirement or turnover projection
- Vehicle List Update – Add/Delete, current odometer
- Vehicle Titles prepared and in your possession
- FT Employee List – Name, Title, Address, Phone, Seniority Date, Wage Rate
 - Retirement or turnover projection
- Route Update – Changes; projection for next year.
- Summer School Plan (if applicable)
- Approval for use of facilities
 - General Meeting with all employees - classroom availability?
 - Full Time Employee meeting - Classroom
 - Employee applications and interviews – Classrooms (2)
- Date we have access to facilities
- Finalize Contract Language
- Current Vendor List for transportation department

We look forward to working with you and are pleased to, at your direction, start the transition process.

Should you have any questions please contact Dan Kinsley at 313-926-6991.

TAB 5

Rebhorn, Emma

From: DeVore, Tonya
Sent: Tuesday, July 23, 2013 10:49 PM
To: Rebhorn, Emma
Subject: FW: Phone Call Today?
Attachments: Comparison Document 3.xls

From: PEATROSS, KELLEY [<mailto:kpeatross@spsd.net>]
Sent: Wednesday, October 19, 2011 10:02 AM
To: DeVore, Tonya
Cc: TERRY DARLAND
Subject: Re: Phone Call Today?

Ms. DeVore,

It was good to speak with you today. Attached is the comparison document. As more information becomes available, I will forward it to you. Also, I will have my assistant forward to you the information regarding Nina Martinez and her seniority.

Dr. Peatross

On Wed, Oct 19, 2011 at 8:49 AM, DeVore, Tonya <tdevore@usw.org> wrote:

Hello Dr. Peatross,

I know you are busy today, but do you have time for a phone conversation. I am getting lots of calls from members and they are asking questions that I am unable to answer regarding the First Service Announcement the District made last week.

Thanks,

Tonya DeVore

Staff Representative

United Steelworkers, District 2

Suite #10 Euclid Plaza

503 North Euclid Avenue

Bay City, MI 48706

Cell: 269-718-9723

Fax: 269-792-3676

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Dr. Peatross

Kelley A. Peatross, Ph.D.
Assistant Superintendent for Human Resources,
Labor Relations and Support Services
School District of the City of Saginaw
550 Millard Street
Saginaw, Michigan 48607
(989) 399-6602 PH
(989) 399-6615 FAX
kpeatross@spsd.net

"Saginaw Public Schools--It's a New Day"

	FIRST STUDENT	DEAN	METS
Company Profile	Started: over 22 years ago in MI, Headquarters: Cincinnati, OH, Nearest Office: Grosse Point, MI, Employees: over 750 in MI, School District Customers: 17 districts in MI	Started: Mid 1950's, Headquarters: Lansing MI, Nearest Office: St. Louis, MI, Employees: 1000+, School District Customers: 9 districts	Started: 1995, Headquarters: Portland, MI, School District Customers: over 42 schools and districts
Training and Safety	6 hours of annual training, Drivers receive 52 hours of training and Attendants receive 16 hours of training	Driver/Attendant Safety & Education Program, 10 week/36 hours, Annual Inservices: 4 hours each, Student Safety Training	New job training, retraining (every 6 months), cross training
Staffing	Contract Manager, Safety/Training Staff, Maintenance Staff, Routers, Dispatchers, Drivers. All qualified current staff will be hired.	Transportation Director, Dispatchers, Mechanics, 10% Sub-Driver, Drivers, Attendants. All qualified current staff will be hired	Contract Manager, Maintenance Manager/ Assistant Manager, Dispatcher/Router, Secretary, Trainer, Lead Drivers, Drivers, Aides. All qualified current staff will be hired
Start Date	November 1, 2011	Mid year start	Mid year start
Union	The union will be recognized	Will recognize union	Will recognize the union
Wages	Will maintain current wages and receive future raises	Guaranteed 3 to 4 hours daily, will maintain current wages	Drivers will maintain wages
Benefits	Aetna Insurance which is comparable to existing insurance Employee Assistance Program Vacation Days, 401K	Recognize current Seniority, Health Insurance, Vacation, Personal, Days, Uniforms, Continuing Education, Employee Assistance Program	\$300.00 per month, per employee who take benefits, BCBS health, dental, vision, 401K, uniforms, perfect attendance program, vacation, holiday
Fleet Specifications/ Technology	Child Check Mate, Theft Mate Alarm, Crossing Arm Front Bumper, Digital Video Monitoring System, GPS, 2 way Radio	Child Reminder Systems, GPS Tracking Systems, 2-way Communication	Video surveillance, GPS
Fleet Purchase/ Replacement	3 new buses during each contract year. \$900,000 for 12 new replacement buses	No plan included for purchase or replacement of fleet	\$54 per route increase for replacements
Maintenance		Includes maintenance & parts for entire bus fleet. No limit on repair cost.	

	FIRST STUDENT	DEAN	MEIS
Routing System	Will use current system Transfinder to optimize routes and ensure completion	Tyler Versa Trans Route Planning Software	Will evaluate current system vs. other systems.
Price to Purchase all of SPSD's buses	\$167,040	\$335,600	\$295,650
Price to Purchase all of SPSD's buses more than 7 yrs old	\$89,350	\$244,200	\$43,300
Annual Inflationary Rate	3.30%	2.75%	
Field Trip Rate	\$24/hour	\$35/hour	\$38/hour
Total Cost without Field Trips	\$1,838,344.00	\$1,906,423.00	
Add'l Cost for 3 buses/yr	No add'l Cost	\$21,500.00	
Total Cost-Yr1	\$1,838,344.00	\$1,927,923.00	
Total Cost-Yr2	\$1,899,009.35	\$1,980,940.88	
Total Cost-Yr3	\$1,961,676.66	\$2,035,416.76	
Total Cost-Yr4	\$2,026,411.99	\$2,091,390.72	
Total Cost-Yr5	\$2,093,283.59	\$2,148,903.96	

Rebhorn, Emma

From: DeVore, Tonya
Sent: Monday, July 01, 2013 2:15 PM
To: Rebhorn, Emma
Subject: FW: Transportation RFP and Invitation to Participate

From: PEATROSS, KELLEY [mailto:kpeatross@spsd.net]
Sent: Monday, July 25, 2011 3:09 PM
To: KENNETH BERRY; JENNIFER BATES; ROWE, SHANTA; RUBY JONES; DeVore, Tonya
Cc: PHOEBE WOOD
Subject: Re: Transportation RFP and Invitation to Participate

The interview schedule has been modified for Tuesday, July 26, 2011 as follows:

2:15pm - 3:15pm (Dean Transportation)

3:30pm - 4:30pm (First Student)

Once the interview is scheduled with the final vendor (METS), I will be in touch. The location for the above listed interviews remains the same which is at the Saginaw Administration Building in Conference Room A (second floor).

Dr. Peatross

On Mon, Jul 25, 2011 at 2:17 PM, PEATROSS, KELLEY <kpeatross@spsd.net> wrote:
Good Afternoon,

As you know, the District advertised for a Request for Proposal regarding Transportation. Three proposals have been submitted to Saginaw Public Schools. Interviews with these vendors are scheduled for tomorrow, Tuesday, July 26, 2011 beginning at 1:00 p.m. in Conference Room A at the Administration Building. We welcome your input and participation. So you know, we will also be contacting your Staff Representative Ms. Tanya DeVore.

If you have questions, please let me know.

--
Dr. Peatross

Kelley A. Peatross, Ph.D.
Assistant Superintendent for Human Resources,
Labor Relations, EEO and Support Services
School District of the City of Saginaw
550 Millard Street
Saginaw, Michigan 48607
(989) 399-6602 PH
(989) 399-6615 FAX
kpeatross@spsd.net

①

"Saginaw Public Schools--It's a New Day"

--

Dr. Peatross

Kelley A. Peatross, Ph.D.
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"Saginaw Public Schools--It's a New Day"

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Dr. Peatross

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If you have questions, please let me know.

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Dr. Peatross

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"Saginaw Public Schools--It's a New Day"

--

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"Saginaw Public Schools--It's a New Day"

TAB 6



District 2

Michael H. Bolton
District DirectorArthur Kroll
Assistant to the Director

May 11, 2012

Dr. Carlton D. Jenkins
Superintendent Saginaw Public Schools
550 Millard Street
Saginaw, MI 48607**Re: Action Item- Transportation Contract with First Student**

Dear Dr. Jenkins:

As you are aware the United Steelworkers Local 8410 has been working on drafting a cost proposal for the Transportation Unit within Saginaw Public Schools. I compiled a proposal (attached) which will provide the District approximately \$128,179.00 to \$147,307.00 in savings (using a 36 week school year), by addressing a few areas in the Collective Bargaining Agreement: Wages, Pension, and Insurance.

The specifics of the Proposal would be:

- \$1.00 Per hour wage reduction for all bargaining unit positions
- 20% Health Care Reductions- the specifics to be determined once plan quotes are received from Vendor
- \$14894.67 to \$34,022.27 Anticipated Savings in Pension Costs
(due to wage reduction and/or new state law)
- \$15,223.50 Anticipated Savings in Added Payroll Cost (SS, FICA, Medicare, Unemployment, Workers Comp.)
(due to wage reduction)

The Current Labor Agreement between the Parties expires 8/31/2012, the Union is prepared to present these economic proposals in front of our membership in exchange for a 3 year agreement between the Parties expiring 8/31/2015. This in no way limits the District from seeking Transportation Contract bids and or accepting Transportation contract bids in the future and/or during the term of this 3 year agreement.

Additionally, the Union is willing to meet with you and/or your representatives to discuss this proposal and any others you may have. Please know that this proposal would still be subject to the ratification of the members of Local 8410 should the board find these terms acceptable.

Sincerely,

Tonya DeVore, Staff Representative

Cc: Brian Massey, USW Local 8410

Full Name	Position	Per Hour
BAILEY, ZADA		10.95
BALLS, ANTHONY K		15.23
BATES, JENNIFER M		15.23
BERRY, KENNETH R		15.23
BLAIR, SHANTOYA S		15.23
BOWEN, EARNEST J		15.23
BOX, LINDA		15.23
BRYANT, CLINT		15.23
CABINE, DENNIS		13.62
CARTER, KAWANA T		10.95
CARTER, MARY		10.95
CLARK, PAMELA		10.95
CRITTENDON, GAIL		13.62
CUNNINGHAM, BENNIE J		15.23
CUNNINGHAM, TIMOTHY		15.23
DAVIS, JARVISA		10.95
DOTTERY, DEAUNDRASCHAUNTELL		10.95
EZELL, MICHELLE		15.23
GOODMAN-HILL, DWENDA		10.95
HANNAH, ALBERT S		13.62
HARRIS, ELLA J		15.23
HATTER, MONYETTE		10.02
HENDERSON, NETTIE		10.95
JASTRZEMSKI, ROXANNE		15.23
JEFFERIES, TRACY L		15.23
JOHNSON, ELEANOR		15.23
JONES, RUBY ANN		10.95
KABAT, DEBORAH		15.23
KING, CORTNEY M		10.95
MARTINEZ, NINA M		15.23
MCCLUNG, SHIRLEY J		15.23
PARHAM-MCDOLE, VENUS		15.23
POLZIN, CARL JAY		13.62
PRINCE, TERESA A		10.95
QUINN, KENYA		15.23
REEVES, JOYCE ANN		10.95
ROBINSON, CARRIE LEE		15.23
ROWE, SHANTA S		10.95
RYTHER, REBECCA		13.62
SCOTT, WINNIE B		15.23
STIDHUM-STEWART, MILLIE		10.95
THOMAS, WARREN		15.23
TYSON, PHYLLIS		10.95
UHRICH, DALE		15.23
VALTIERRA, THOMAS		13.62
VAUGHN, MONICA R		10.95
WILLIAMS, LUCRETIA R		15.23
WILSON, ELIZABETH		10.95
\$1.00 Per Hour Wage/ 20% Health Care Reduction:		
35 Hours X 1.00 X 52 Weeks X 48 Employees		\$87,360.00

20% Health Care Reduction	\$21,362.93
10% Pension Contribution	\$8,736.00
Assuming 25% Added Payroll Cost	\$21,840.00
Social Security	
FICA	
Unemployment	
Worker Comp	
Mefidcare	
Etc.	
	\$139,298.93 Grand Total

[illegible]

Annual Savings	

Insurance Coverage Breakdown for Bus Drivers/Riders 2011-12

Coverage	District's Monthly Contribution					
	# Enrolled	Health		# Enrolled	Dental	# Enrolled
Single	14	554.70	\$7,765.80	14	24.28	15
2-Person	0		\$0.00	6	45.06	4
Family	0		\$0.00	4	77.42	5

Coverage	# Enrolled	Health		Dental	Dental	# Enrolled
P/T						
Single	0		\$0.00	3	14.28	4
2-Person	0		\$0.00	0		0
Family	0		\$0.00	0		1
			\$7,765.80			
				\$962.80		

	# Enrolled	Life
F/T	29	3.60
P/T	1	3.00
P/T	8	1.80

Vision		
4.34		\$65.10
9.33		\$37.32
14.04		\$70.20

Vision		
2.56		
0		
8.26		
		\$172.62

\$8,901.22 monthly

\$106,814.54 annually

\$21,362.93 20% Annual Savings



Date August 1, 2012

Jennifer Bates
345 S. 13th st
Saginaw, MI 48601

Dear Jennifer Bates

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

~~We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.~~

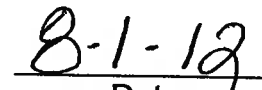
Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.


Signature


Date



Date: August 1, 2012

Gwendolyn Bentley
15 Huntley Ct
Saginaw, MI 48601

Dear Gwendolyn Bentley

I am pleased to confirm our offer of employment to you for the position of **(Bus monitor)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Monitor)** will be **\$10.02 while performing monitor duties and \$8.00 per hour for all non-monitor related duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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~~We are looking forward to having you join us and being a part of the First Student Saginaw team.~~ Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.


Signature

8-1-12
Date



Date: August 1, 2012

Kenneth R. Berry
113 Moton Dr
Saginaw, MI 48601

Dear Kenneth R. Berry

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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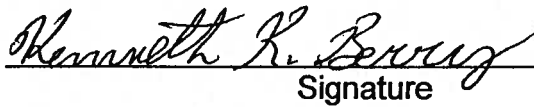
We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.


Signature

8-1-12
Date



Date: August 1, 2012

Shantoya Blair
1614 Sheridan Ave
Saginaw, MI 48601

Dear Shantoya Blair

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

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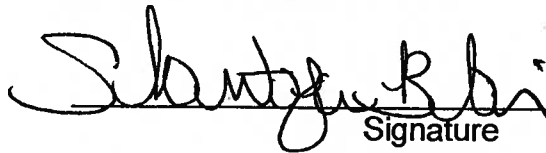
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Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.


Signature

08-09-12
Date



Date: August 1, 2012

Shatoya
~~Shantoya~~ Bond
2006 Linclon St
Saginaw, MI 48601

Shatoya
Dear ~~Shantoya~~ Bond

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$13.62 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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During your first ninety (90) calendar days of employment, you will be a probationary employee. ~~During this period of probation, the company will~~ evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

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We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Shatoya Bond
Signature

08-01-12
Date



Date: August 1, 2012

Earnest Bowen
2401 Robinwood
Saginaw , MI 48601

Dear Earnest Bowen

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

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Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Ernest J. Bower
Signature

8-1-12
Date



Date: August 1, 2012

Clint Bryant
1716 N. Charles St
Saginaw, MI 48602

Dear Clint Bryant

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

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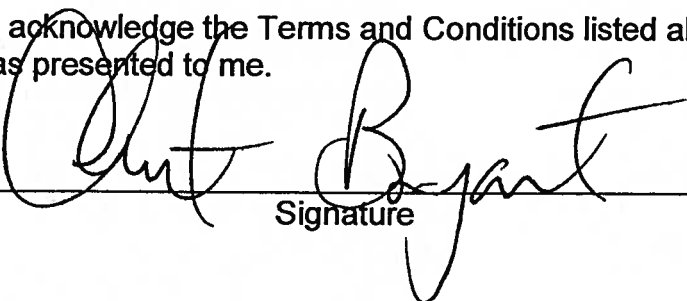
~~We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.~~

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.



Signature



Date



Date: August 1, 2012

Dennis Cabine
3883 Ballentrae Dr
Saginaw, MI 48603

Dear Dennis Cabine

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

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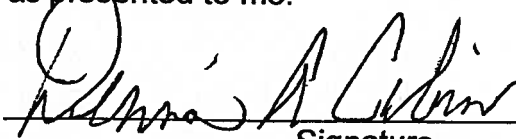
We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.



Signature

8-1-2012

Date



Date: August 1, 2012

Pamela Clark
3350 Southfield Dr
Saginaw, MI 48601

Dear Pamela Clark

I am pleased to confirm our offer of employment to you for the position of **(Bus Monitor)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Monitor)** will be **\$10.95 while performing monitor duties and \$8.00 per hour for all non-monitor related duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Pamela Clark
Signature

8-1-2012
Date



Date: August 1, 2012

Gail Crittendon
2170 King Rd Apt 1
Saginaw, MI 48601

Dear Gail Crittendon

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Hail S. Cuttenden
Signature

8/1/12
Date



Date;
August 1, 2012

Bennie Cunningham
3116 Parkwood
Saginaw, MI 48601

Dear Bennie Cunningham

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Bennie Cunningham
Signature

8-1-12
Date



July 11, 2012

Timothy L. Cunningham
4894 Fontaine Blvd.
Saginaw, MI 48603

Dear Tim:

I am pleased to confirm our offer of employment to you for the position of **School Bus Driver/Trainer** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a School Bus Driver will be **\$15.23 per hour**. When you are conducting training activities for other employees and/or candidates, you will be compensated an additional fifty cents (50 cents) per hour.

Your official hire date will be July 12, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Julie
7-10-12

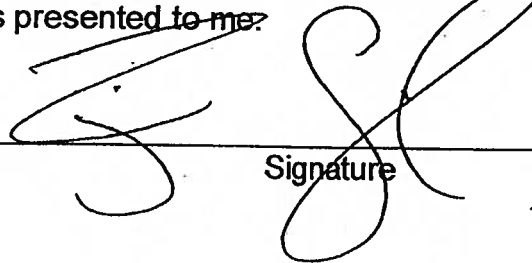
Timothy Cunningham
July 11, 2012
Page 2

Sincerely,

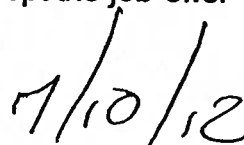
John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Timothy Cunningham Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer
as presented to me.



Signature



Date



Date: August 1, 2012

Jarvisa Davis
3924 Lamson
Saginaw, MI 48601

Dear Jarvisa Davis

I am pleased to confirm our offer of employment to you for the position of **(Bus Monitor)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Monitor)** will be **\$10.95 while performing monitor duties and \$8.00 per hour for all non-monitor related duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

~~We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.~~

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.



Signature



Date



Date; August 1, 2012

Deaundra Dottery
3119 Birch Park
Saginaw, MI 48601

Dear Deaundra Dottery:

I am pleased to confirm our offer of employment to you for the position of **(Bus Monitor)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Monitor)** will be **\$10.95 while performing monitor duties and \$8.00 per hour for all non-monitor related duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Shaundra K. Kelly
Signature

8/11/12
Date



Date: August 1, 2012

Michelle Ezell
1800 Beacon Dr. Apt. B-3
Saginaw, MI 48602

Dear Michelle Ezell:

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

~~We are looking forward to having you join us and being a part of the First Student Saginaw team.~~ Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Michelle Zell
Signature

8-1-12
Date



Date; August 1, 2012

Dwenda Goodman-Hill
619 S. 29th
Saginaw, MI 48601

Dear Dwenda Goodman-Hill

I am pleased to confirm our offer of employment to you for the position of **(Bus Monitor)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Monitor)** will be **\$10.95 while performing monitor duties and \$8.00 per hour for all non-monitor related duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

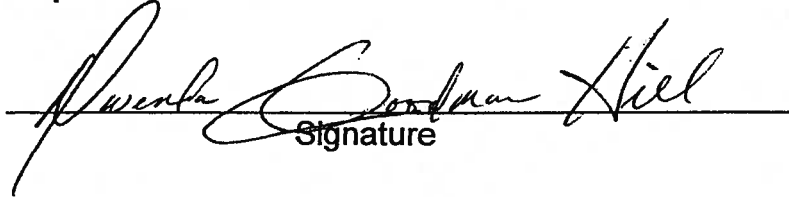
~~We are looking forward to having you join us and being a part of the First Student Saginaw team.~~ Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.


Signature

8-1-12
Date



Date: August 1, 2012

Monyette Hatter
1406 Essling St
Saginaw, MI 48601

Dear Monyette Hatter

I am pleased to confirm our offer of employment to you for the position of **(Bus Monitor)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Monitor)** will be **\$10.95 while performing monitor duties and \$8.00 per hour for all non-monitor related duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

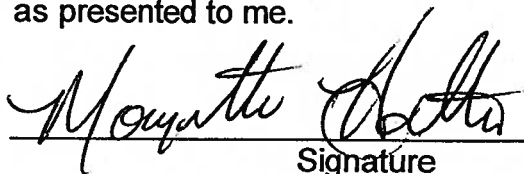
~~We are looking forward to having you join us and being a part of the First Student Saginaw team.~~ Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.


Signature

8-1-12
Date



Date: August 1, 2012

Ella Harris
910 Johnson St
Saginaw, MI 48601

Dear Ella Harris:

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

~~We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.~~

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.


Signature

8-1-12
Date



Date: August 1, 2012

Nettie Henderson
4611 Hemmeter #7
Saginaw, MI 48602

Dear Nettie Henderson

I am pleased to confirm our offer of employment to you for the position of **(Bus Monitor)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Monitor)** will be **\$10.95 while performing monitor duties and \$8.00 per hour for all non-monitor related duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.


Signature

8-1-12
Date



June 27, 2012

Roxanne Jastrzemski
1290 Vincent
Saginaw, MI 48638

Dear Roxanne:

I am pleased to confirm our offer of employment to you for the position of **School Bus Driver/Trainer** at our new Saginaw, Michigan location. You will report directly to John Kiraly, Location Manager.

Your rate of pay as a School Bus Driver will be **\$15.23 per hour**. When you are conducting training activities for other employees and/or candidates, you will be compensated an additional fifty cents (50 cents) per hour.

Your official hire date will be July 2, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (513) 761-5136, extension 3 (office) or (513) 218-2217 (cell) should you have any questions regarding this offer.

Roxanne Jastrzemski
June 27, 2012
Page 2

Sincerely,



Rick Kellerman
Region Human Resources Manager
First Student
100 Hamilton Blvd.
Arlington Heights, OH 45215
Cc: John Kiraly

Roxanne Jastrzemski Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.


Signature
Date



Date: August 1, 2012

Eleanor Johnson
904 Owens
Saginaw, MI 48601

Dear Eleanor Johnson:

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

E. Daniel Johnson
Signature

8-27-2012
Date



Date: August 1, 2012

Ruby Ann Jones
1624 Federal Ave
Saginaw, MI 48601

Dear Ruby Ann Jones

I am pleased to confirm our offer of employment to you for the position of **(Bus Monitor)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Monitor)** will be **\$10.95 while performing monitor duties and \$8.00 per hour for all non-monitor related duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

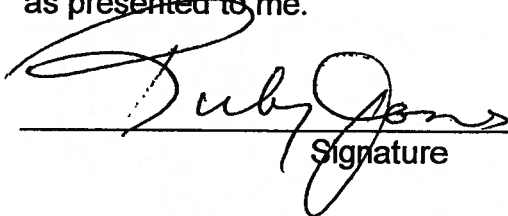
We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.



Signature

8-1-12
Date



Date: August 1, 2012

Deborah Kabat
4313 S. Westervelt RD
Saginaw, MI 48604

Dear Deborah Kabat

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Deborah Kabat
Signature

Aug 1. 2012
Date



Date: August 1, 2012

Cortney King
3452 Brookwood Ln
Saginaw, MI 48601

Dear Cortney King

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Courtney King
Signature

8-1-12
Date

1019 East Genesee Avenue
Saginaw, MI 48607
Phone: 989-399-6802



November 14, 2012

Timothy Marshall
1665 N. Miller Road
Saginaw, MI 48609

Dear Tim:

I am pleased to extend an offer of employment to you for the position of Lead Technician with First Student in Saginaw, Michigan tentatively effective November 27, 2012.

Your rate of pay will be **\$22.00 per hour**, and you will be paid on a bi-weekly basis. You will report to Greg, Howe, Technician-In-Charge.

Please be advised this letter constitutes a job offer only and should not be construed as a contract of employment. This offer is contingent upon the satisfactory completion of a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Government regulations require that we verify identity and employment eligibility of all new employees within 72 hours of their date of hire. Please be prepared to submit proper documentation upon request.

The company's vacation calendar begins on April 1 of each year and has a set schedule based on your length of service with the company. Your vacation for the new fiscal year beginning April 1, 2013 will be 10 days as per company policy. In addition, First Student provides paid time off for certain holidays each year. The listing of approved holidays will be posted at the start of each calendar year.

Per your request, you have also been approved for two weeks of vacation in February 2013 without pay.

As a full-time hourly employee, you are entitled to 5 sick days per calendar year beginning January 1, 2013.

Note: Neither vacation days or sick days can be banked, deferred or carried over from one year to the next. Since sick days are not accrued, unused sick days are not payable upon termination of employment.

We are looking forward to having you join the First Student team and become an integral part of our Saginaw operations. Please feel free to contact me at (989) 399-6802 should you have any questions regarding this offer.

Sincerely,

John Kiraly

Location Manager


Cc: Greg Howe Doug Meek

Timothy Marshall Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.



Signature



Date



June 27, 2012

Nina M. Martinez
1421 S. Harrison
Saginaw, MI 48602

Dear Nina:

I am pleased to confirm our offer of employment to you for the position of **School Bus Driver** at our new Saginaw, Michigan location. In addition, when extra work is available, you will have the opportunity to assist in the Dispatch office as needed.

Your rate of pay will be **\$15.23 per hour**. You will report directly to John Kiraly, Location Manager.

Your official hire date is tentatively planned for July 2, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (513) 761-5136, extension 3 (office) or (513) 218-2217 (cell) should you have any questions regarding this offer.

Nina Martinez
June 27, 2012
Page 2

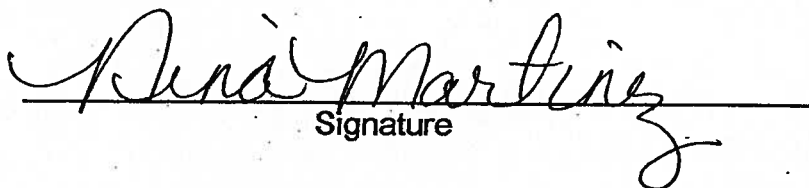
Sincerely,

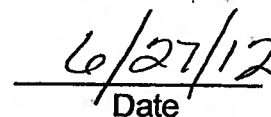


Rick Kellerman
Region Human Resources Manager
First Student
100 Hamilton Blvd.
Arlington Heights, OH 45215
Cc: John Kiraly

Nina Martinez Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.


Signature


Date



Date: August 1, 2012

Keishna McClendon
419 N. Bond Apt 1
Saginaw, MI 48602

Dear Keishna McClendon

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$13.62 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

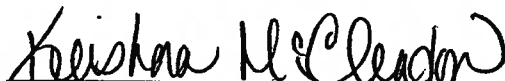
We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

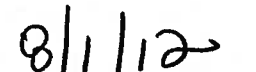
John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.



Signature



Date



Date: August 1, 2012

Shirley McClung
623 N. 23rd St
Saginaw, MI 48601

Dear Shirley McClung

I am pleased to confirm our offer of employment to you for the position of (Bus Driver) at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a (First Student Bus Driver) will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

~~We are looking forward to having you join us and being a part of the First Student Saginaw team.~~ Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Page 2

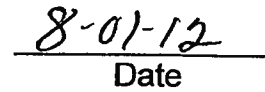
Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.


Signature


Date



Date: August 1, 2012

Venus Parham-McDole
530 S. 22nd St
Saginaw, MI 48601

Dear Venus Parham-McDole

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Wesley Parham-McDole 8-1-12
Signature Date



Date: August 1, 2012

Kenya Quinn
1707 Mackinaw St P.O 20101
Saginaw, MI 48602

Dear Kenya Quinn

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Kennya Guinn
Signature

8-1-12
Date



Date: August 1, 2012

Carl Polzin
731 Stoker
Saginaw, MI 48602

Dear Carl Polzin

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.



Signature

8/2/12

Date



Date: August 1, 2012

Teresa Prince
324 S. 17th St
Saginaw, MI 48601

Dear Teresa Prince

I am pleased to confirm our offer of employment to you for the position of **(Bus Monitor)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Monitor)** will be **\$10.95 while performing monitor duties and \$8.00 per hour for all non-monitor related duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

John A. Kiraly
Signature

8-1-12
Date



Date: August 1, 2012

Shanta Rowe
455 S. 9th ST
Saginaw, MI 48601

Dear Shanta Rowe

I am pleased to confirm our offer of employment to you for the position of **(Bus Monitor)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Monitor)** will be **\$10.95 while performing monitor duties and \$8.00 per hour for all non-monitor related duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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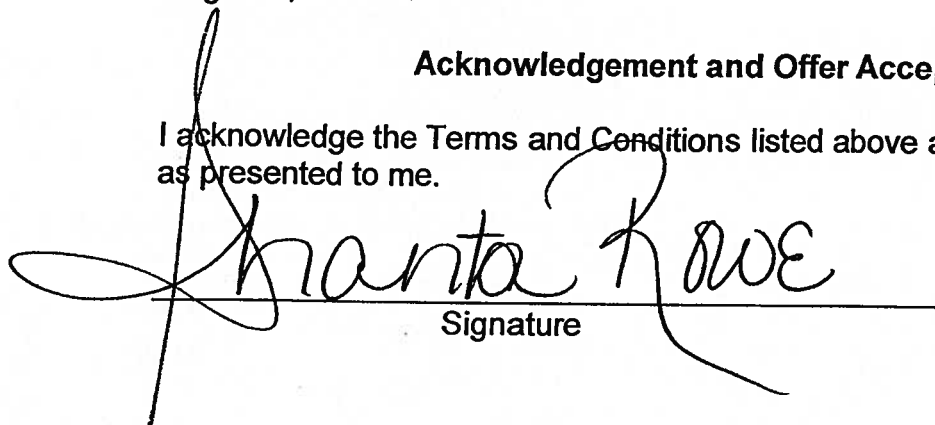
We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

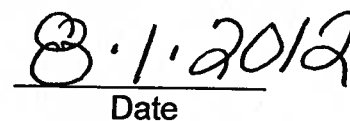
Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.


Signature


Date



Date: August 1, 2012

Rebecca Ryther
1516 N. Oakley
Saginaw, MI 48602

Dear Rebecca Ryther

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Rebecca Ryther
Signature

8-01-2012
Date



Date: August 1, 2012

Winnie B. Scott
330 S. 15th St
Saginaw, MI 48601

Dear Winnie B. Scott

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Winnie B Scott 8-1-12
Signature Date



Date: August 1, 2012

Millie Stidhum-Stewart
3309 Grant
Saginaw, MI 48602

Dear Millie Stidhum-Stewart

I am pleased to confirm our offer of employment to you for the position of **(Bus Monitor)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Monitor)** will be **\$10.95 while performing monitor duties and \$8.00 per hour for all non-monitor related duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Melissa Stidham-Stewart
Signature

8-1-12
Date



Date: August 1, 2012

Dale Uhrich
2441 Bewick St
Saginaw, MI 48602

Dear Dale Uhrich

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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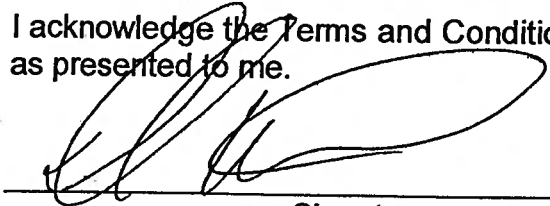
We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.



Signature

8/1/12

Date



Date: August 1, 2012

Thomas Valtierra
2688 Starlite Dr
Saginaw, MI 48603

Dear Thomas Valtierra

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Thomas Valtierra
Signature

8-1-12
Date



Date: August 1, 2012

Monica Vaughn
614 S. Andre Apt 11
Saginaw, MI 48602

Dear Moncia Vaughn

I am pleased to confirm our offer of employment to you for the position of **(Bus Monitor)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Monitor)** will be **\$10.95 while performing monitor duties and \$8.00 per hour for all non-monitor related duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Monica Vaughn
Signature

8-1-12
Date



Date: August 1, 2012

Lucretia R. Williams
931 S. 12th St
Saginaw, MI 48601

Dear Lucretia R. Williams

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$15.23 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

Government regulations require that we verify identity and employment eligibility of all new employees within seventy-two (72) hours of their date of hire.

We are looking forward to having you join us and being a part of the First Student Saginaw team. Please feel free to contact me at (989) 399-6803 should you have any questions regarding this offer.

Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Lucretia Rene Williams
Signature

8-9-12
Date



Date: August 1, 2012

Elizabeth Wilson
655 S. 17th
Saginaw, MI 48601

Dear Elizabeth Wilson

I am pleased to confirm our offer of employment to you for the position of **(Bus Monitor)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Monitor)** will be **\$10.95 while performing monitor duties and \$8.00 per hour for all non-monitor related duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

Please be advised this letter constitutes a contingent job offer only and should not be construed as a contract of employment.

During your first ninety (90) calendar days of employment, you will be a probationary employee. During this period of probation, the company will evaluate your attendance, performance, and suitability for this position. The company reserves the right to terminate your employment during this probation period without further recourse.

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Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.


Signature

8-1-12
Date



Date: August 1, 2012

Sharlene Young
987 Athens
Saginaw, MI 48601

Dear Sharlene Young

I am pleased to confirm our offer of employment to you for the position of **(Bus Driver)** at our new Saginaw, Michigan location. You will report directly to me.

Your rate of pay as a **(First Student Bus Driver)** will be **\$13.62 while driving and \$10.00 per hour for all non-driving duties**. Non-driving duties may include office work, washing buses, cleaning the parking lot and attending training classes etc.

Your official hire date will be August 6, 2012 and is contingent upon satisfactory completion of all company training, a pre-employment background investigation, post-offer drug screening and physical exam, verification of previous employment and education, and your acceptance of the terms described in this letter. Your employment with First Student is "at will" and is naturally subject to the terms and conditions of the Company's corporate policies as modified or terminated from time-to-time.

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Sincerely,

John Kiraly
Location Manager
First Student
1019 East Genesee Avenue
Saginaw, MI 48607

Acknowledgement and Offer Acceptance

I acknowledge the Terms and Conditions listed above and accept the job offer as presented to me.

Sharlene Young
Signature

Aug 1, 2012
Date

From: PEATROSS, KELLEY [<mailto:kpeatross@spsd.net>]

Sent: Saturday, November 05, 2011 2:38 PM

To: Meek, Doug

Subject: Re: Employee Meeting - Transportation

Mr. Meek,

At this time, the District has opted to pull back the RFP and approval and not move towards managed services at this time. I will be communicating this information to Mr. Kinsley today as well. We anticipate re-bidding in the spring. If you have further questions, please let me know.

Dr. Peatross

Kelley A. Peatross, Ph.D.

Assistant Superintendent for Human Resources,

Labor Relations and Support Services

School District of the City of Saginaw

550 Millard Street

Saginaw, Michigan 48607

(989) 399-6602 PH

(989) 399-6615 FAX

kpeatross@spsd.net

"Saginaw Public Schools--It's a New Day"

From: Meek, Doug

Sent: Wednesday, November 02, 2011 3:49 PM

To: PEATROSS, KELLEY

Subject: Employee Meeting - Transportation

Kelly,

Welcome back from vacation. For the upcoming meeting with the drivers and bus attendants I would like to bring in some of the First Student Region Team. Will Wednesday, November 9 after morning routes work? We have a Q&A and other handouts for the meeting along with an application package. Also we are planning to have additional FS Team members with us to review applications and provide immediate interviews. We will also reach out to office staff and mechanics.

Let me know if this will work for your schedule.

Enjoy the day.

Regards,

Doug

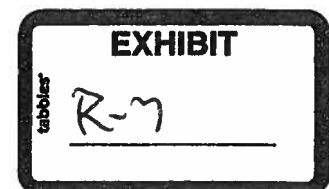
Doug Meek,

Area General Manager

First Student, Inc.

Phone: 330 328 2286

E-Fax: 513 275 4607



EMPLOYEE HANDBOOK ACKNOWLEDGMENT

Amended, July 2011

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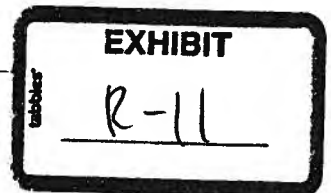
Name (Please Print):

Jennifer M. Bates

Location:

Saginaw

Position:

Bus Driver

Signature:

Jennifer M. Bates

Date:

6-12-12Given
6-12-12

(This form is to be signed, removed, and included in your personnel file.)

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

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Name (Please Print):

Gwendolyn Bentley

Location:

12635 Saginaw

Position:

Driver / Assistant

Signature:

Gwendolyn Bentley

Date:

6-13-12

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Name (Please Print):Kenneth R. Berry**Location:**Saginaw**Position:**~~Kenneth~~ School Bus Driver**Signature:**Kenneth R. Berry**Date:**6-12-12

*File
6-12-12*

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Name (Please Print):

Shantoya Blair

Location:

Saginaw 12635

Position:

BUS Driver

Signature:

Shantoya Blair

Date:

08-09-12

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Name (Please Print):

Shatoya Bond

Location:

Saginaw (#12635)

Position:

Driver

Signature:

Shatoya Bond

Date:

6-12-12*9/11/12
6-12-12**(This form is to be signed, removed, and included in your personnel file.)*

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

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Name (Please Print):

Ernest J. Bowen

Location:

12635

Position:

Bus Driver

Signature:

Ernest J. Bowen

Date:

7-19-12

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EMPLOYEE HANDBOOK ACKNOWLEDGMENT

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Name (Please Print):

Clint Bryant

Location:

Saginaw

Position:

Driver

Signature:

June 6-12-12

Date:

June 12 2012

(This form is to be signed, removed, and included in your personnel file.)

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

Amended, July 2011

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Name (Please Print):

Dennis A Cabine

Location:

Saginaw Public School

Position:

Driver

Signature:

Dennis A Cabine

Date:

June 12, 2012*June 6-12-12*

(This form is to be signed, removed, and included in your personnel file.)



EMPLOYEE HANDBOOK ACKNOWLEDGMENT

Amended, July 2011

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Name (Please Print):

Pamela A. Clark

Location:

~~3350 Southfield Dr. Saginaw~~

Position:

Driver/monitor

Signature:

Pamela Clark

Date:

6-12-12

June 6-12-12

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First Student

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

Amended, July 2011

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Name (Please Print):Gail L. Crittendon**Location:**Saginaw**Position:**Gail L. Crittendon (Driver)**Signature:**Gail L. Crittendon**Date:**6/12/126-12-12

(This form is to be signed, removed, and included in your personnel file.)

JA

000466

First  Student**EMPLOYEE HANDBOOK ACKNOWLEDGMENT**

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Name (Please Print):

12635

Location:

Bus Driver

Position:

Bennie J. Cunningham

Signature:

Bennie Cunningham

Date:

6-12-12

Gutter
6-12-12

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JA

000467

First Student

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Name (Please Print):

Timothy Cunningham

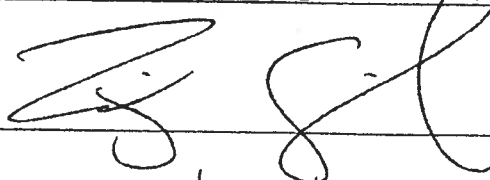
Location:

12635

Position:

Bus Driver

Signature:



Date:

6/12/12

JWC
6-12-12

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JA

000468

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Name (Please Print):

Jarvisa Davis

Location:

Saginaw MI 12638

Position:

Bus Monitor

Signature:

Jarvisa Davis

Date:

6/14/12

6/14/12

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Name (Please Print):

Deandra Dallery

Location:

Saginaw #12135

Position:

Driver

Signature:

Deandra Dallery

Date:

6/12/12

JW
6-12-12

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First  Student**EMPLOYEE HANDBOOK ACKNOWLEDGMENT**

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Name (Please Print):

Michelle Ezell

Location:

Saginaw

Position:

Driver

Signature:

Michelle Ezell

Date:

6-12-12June 6-12-12

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JA

000471

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Name (Please Print):

Dwenda Ann Goodman-Hill


Location:

Saginaw - 12635

Position:

Bus Aid

Signature:



Date:

6-14-12

(This form is to be signed, removed, and included in your personnel file.)

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

Amended, July 2011

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Name (Please Print):

Ella Harris

Location:

12635

Position:

Bus Driver

Signature:

Ella Harris

Date:

6.13.12

(This form is to be signed, removed, and included in your personnel file.)

First Student

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

Amended, July 2011

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Name (Please Print):

Monette Hittler

Location:

Saginaw 12365

Position:

Monette Hittler Driver

Signature:

Monette Hittler

Date:

6-12-12

JWH
6-12-12

(This form is to be signed, removed, and included in your personnel file.)

JA

000474

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

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Name (Please Print):

Nettie Henderson

Location:

Sq61nacw #12635

Position:

Monitors

Signature:

Nettie Henderson

Date:

6-14-2012

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6/14/12

First Student

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Name (Please Print):

Roxanne Jastrzemski

Location:

Saginaw 12635

Position:

Driver/Trainer

Signature:

Roxanne Jastrzemski

Date:

6/13/12

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JA

000476

First Student

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Name (Please Print):

Eleanor Johnson

Location:

Saginaw

Position:

Driver

Signature:

Eleanor Johnson

Date:

6-12-2012

JW
6-12-12*(This form is to be signed, removed, and included in your personnel file.)*

JA

000477

**EMPLOYEE HANDBOOK ACKNOWLEDGMENT**

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Name (Please Print):

Ruby Jones

Location:

S1236S

Address 1109 Thompson

Position:

Bus monitor

Signature:

Ruby Jones

Date:

6-14-12

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6/14/12

First Student

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Name (Please Print):Deborah Kabat**Location:**Saginaw 12635**Position:**Bus Driver**Signature:**Deborah Kabat**Date:**6-13-12

(This form is to be signed, removed, and included in your personnel file.)

6/13/12

JA

000479

First Student

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Name (Please Print):

Courtney King

Location:

Saginaw 12635

Position:

Driver

Signature:

Courtney King

Date:

6-12-12

JMK
6-12-12*(This form is to be signed, removed, and included in your personnel file.)*

JA

000480

**EMPLOYEE HANDBOOK ACKNOWLEDGMENT**

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Name (Please Print):

Nina Martinez

Location:

Saginaw MI

Position:

Dispatcher / Bus Driver

Signature:

Nina Martinez

Date:

6/27/12*(This form is to be signed, removed, and included in your personnel file.)*

First Student

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Name (Please Print):

Keishna McClendon

Location:

Saginaw Location #12635

Position:

DRIVER

Signature:

Keishna McClendon

Date:

6/12/12

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JA

000482

First Student

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Name (Please Print):Shirley J. McClung**Location:**Saginaw #12635**Position:**DRIVER**Signature:**Shirley J. McClung**Date:**6-12-126-12-12

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JA

000483

First Student

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Name (Please Print):

Venus Parham-McDole

Location:

Saginaw # 12635

Position:

Bus Driver

Signature:

Venus Parham-McDole

Date:

6/12/12*gllw
6-12-12**(This form is to be signed, removed, and included in your personnel file.)*

JA

000484



**EMPLOYEE HANDBOOK ACKNOWLEDGMENT**

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Name (Please Print):

CARL JAY POLZIN

Location:

SAGINAW

Position:

BUS DRIVER

Signature:

Date:

6/12/12

Jill
6-12-12*(This form is to be signed, removed, and included in your personnel file.)*

JA

000485

First Student

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Name (Please Print):

Mrs. Teresa A. Prince

Location:

Saginaw 12635

Position:

Driver

Signature:

Mrs. Teresa A. Prince

Date:

6-12-12*JP*
6-12-12

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JA

000486

First Student

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Name (Please Print):

Kenya B. Quinn

Location:

Saginaw

Position:

Bus Driver

Signature:

Kenya Quinn

Date:

6-12-2012*Quinn
6-12-12*

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Name (Please Print):

Shanta Rowe

Location:

Saginaw 12635

Position:

Driver / Assistant

Signature:

Shanta Rowe

Date:

6.13.12

6/14/12

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First Student

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Name (Please Print):

Rebecca Ryther

Location:

Saginaw 12635

Position:

Bus Driver

Signature:

Rebecca Ryther

Date:

6-12-12

JMR
6-12-12*(This form is to be signed, removed, and included in your personnel file.)*

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Name (Please Print):

Winnie B. Scott Winnie B. SCOTT

Location:

12635

Position:

Bus Driver

Signature:

Winnie B. Scott

Date:

6-12-12Julie
6-12-12*(This form is to be signed, removed, and included in your personnel file.)*

First Student

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Name (Please Print):

Christian Sorensen

Location:

Saginaw (123035)

Position:

MONITOR

Signature:

Christian Sorensen

Date:

June 14, 2012

(This form is to be signed, removed, and included in your personnel file.)

JA

000491

First Student

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

Amended, July 2011

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Name (Please Print):

Millie Stidhum-Stewart

Location:

Saginaw #12635

Position:

Bus Assistant

Signature:

Millie Stidhum-Stewart

Date:

6-14-12

6/14/12

(This form is to be signed, removed, and included in your personnel file.)

JA

000492

First Student

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

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Name (Please Print):

Dale Uhrich

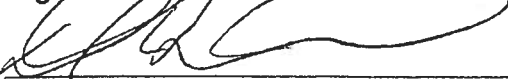
Location:

Saginaw 12635

Position:

Bus Driver

Signature:



Date:

6/12/12*June 6-12-12*

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JA

000493

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

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Name (Please Print):

Thomas Valtierra

Location:

12635

Position:

School bus driver

Signature:

Thomas Valtierra

Date:

7-19-2012

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JA

000494

**EMPLOYEE HANDBOOK ACKNOWLEDGMENT**

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Name (Please Print):

Monica Vaughn

Location:

Saginaw / 12635

Position:

Monitor / driver

Signature:

Monica Vaughn

Date:

6-12-12

JLW
6-12-12*(This form is to be signed, removed, and included in your personnel file.)*

First Student

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

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Name (Please Print):

Lucretia Williams

Location:

Saginaw

Position:

Driver

Signature:

Lucretia Williams

Date:

6/12/12

June
6-12-12

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JA

000496

637

First Student

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

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Name (Please Print):

Elizabeth Wilson

Location:

JACINAW 12635

Position:

Monitor

Signature:

Elizabeth Wilson

Date:

6-14-126/14/12

(This form is to be signed, removed, and included in your personnel file.)

JA

000497

First Student

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

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Name (Please Print):

Sharlene Young

Location:

Saginaw 12.635

Position:

Driver

Signature:

Sharlene Young

Date:

6/13/12 6/12/12

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JA

000498

First Student

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

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Name (Please Print):Lawrence Carter**Location:**126.35**Position:**Driver**Signature:**Lawrence Carter**Date:**7/12/12

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JA

000499



EMPLOYEE HANDBOOK ACKNOWLEDGMENT

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Name (Please Print):

Santa Cruz

Location:

12635

Position:

Driver

Signature:

[Handwritten Signature]

Date:

8/9/12

(This form is to be signed, removed, and included in your personnel file.)

[Handwritten Signature] 8/9/12

First  Student**EMPLOYEE HANDBOOK ACKNOWLEDGMENT**

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Name (Please Print):

Daryl Currington

Location:

~~#6235~~ 12635

Position:

DRIVER

Signature:

Daryl Currington

Date:

08-23-2012

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JA

000501



First Student

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Name (Please Print):

Jameshia Dorsey

Location:

Saginaw - 12635

Position:

Driver

Signature:

Jameshia Dorsey

Date:

7-24-12John
7-25-12

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First Student

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Name (Please Print):DORIS Johnson**Location:**12635**Position:**DRIVER**Signature:**Doris Johnson**Date:**August 9, 2012Jim 8/9/12

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JA

000503

First Student

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Name (Please Print):Kishna Johnson**Location:**12635**Position:****Signature:**Kishna Johnson**Date:**8-9-12gme 8/9/12

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JA

000504

First Student

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Name (Please Print):

12635 Tiffany Johnson

Location:

Bus driver 12635

Position:

Tiffany Johnson driver

Signature:

8-9-12

Date:

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JA

000505

9/9/12

First Student

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Name (Please Print):

Jaymette Kelley

Location:

26
16235 12635

Position:

Driver

Signature:

Jaymette Kelley

Date:

08-23-2012

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First Student

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Name (Please Print):

REXA LALL

Location:

12635

Position:

Bus Driver

Signature:



Date:

7/12/12

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JA

000507

630

First Student

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Name (Please Print):

Jackie McCombs Jackie McCombs

Location:

12635

Position:

Driver

Signature:

Jackie McCombs

Date:

8/9/12

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JA

000508

First  Student**EMPLOYEE HANDBOOK ACKNOWLEDGMENT**

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Name (Please Print):

Lynn McCay

Location:

12635

Position:

Driver

Signature:

Lynn McCay

Date:

8-9-2012

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JA

000509



First Student

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Name (Please Print):

RONALD J metiva

Location:

BAGINAW 12635

Position:

DRIVER

Signature:

Ronald J metiva

Date:

7-12-2012

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JA

000510

First Student

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Name (Please Print):

Michael J Miller

Location:

SAGINAW 12638

Position:

Driver

Signature:

Michael J Miller

Date:

7-24-20129/11/12
7-25-12

JA

(This form is to be signed, removed, and included in your personnel file.)

000511

First Student

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

Amended, July 2011

This is to acknowledge that I have received a copy of the **First Student Employee Handbook** and understand that it contains important information on the Company's general policies and on my privileges and obligations as an employee. **I acknowledge that I am expected to read, understand and adhere to the Company policies and will familiarize myself with the material in the Employee Handbook.**

I understand that the Company may change, rescind, or add to any policies, programs or procedures described in the Employee Handbook from time to time at its sole and absolute discretion with or without prior notice.

I understand that employment with First Student is considered to be "At-Will" employment (except for employees covered by a Collective Bargaining Agreement). As such, I understand that my employment with the Company is not for a specified term and is at the mutual consent of myself and the Company. Accordingly, either I or the Company may terminate that employment relationship "at-will," with or without cause, at any time, with or without notice.

If the terms and conditions of my employment are covered by a Collective Bargaining Agreement, any term or condition contained in the Collective Bargaining Agreement supersedes the terms and conditions contained in this Employee Handbook, in the event that they conflict.

I further understand that only the President of First Student has the authority to modify the at-will nature of the employment relationship and may do so only in a written agreement executed by the President and the employee.

Name (Please Print):

Shara Shelton

Location:

12635 Saginaw, MI

Position:

Driver

Signature:

Shara Shelton

Date:

8-23-12

(This form is to be signed, removed, and included in your personnel file.)

JA

000512

63.5

First Student

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

Amended, July 2011

This is to acknowledge that I have received a copy of the **First Student Employee Handbook** and understand that it contains important information on the Company's general policies and on my privileges and obligations as an employee. **I acknowledge that I am expected to read, understand and adhere to the Company policies and will familiarize myself with the material in the Employee Handbook.**

I understand that the Company may change, rescind, or add to any policies, programs or procedures described in the Employee Handbook from time to time at its sole and absolute discretion with or without prior notice.

I understand that employment with First Student is considered to be "At-Will" employment (except for employees covered by a Collective Bargaining Agreement). As such, I understand that my employment with the Company is not for a specified term and is at the mutual consent of myself and the Company. Accordingly, either I or the Company may terminate that employment relationship "at-will," with or without cause, at any time, with or without notice.

If the terms and conditions of my employment are covered by a Collective Bargaining Agreement, any term or condition contained in the Collective Bargaining Agreement supersedes the terms and conditions contained in this Employee Handbook, in the event that they conflict.

I further understand that only the President of First Student has the authority to modify the at-will nature of the employment relationship and may do so only in a written agreement executed by the President and the employee.

Name (Please Print):

Tanya Smith

Location:

~~12435~~ 12435

Position:

Bus driver

Signature:

Tanya Smith

Date:

7-23-12

(This form is to be signed, removed, and included in your personnel file.)

JA

000513

Former Saginaw Public School Drivers and Monitors Hired by First Student

Last Name	First Name	Hire Date	<u>Date Received Employee Handbook</u>
BATES	JENNIFER	8/6/12	6/12/2012
BENTLEY	GWENDOLYN	8/17/12	6/13/2012
BERRY	KENNETH	8/6/12	6/12/2012
BLAIR	SHANTOYA	8/17/12	8/9/2012
BOND	SHATOYA	8/17/12	6/12/2012
BOWEN	EARNEST	8/17/12	7/19/2012
BRYANT	CLINT	8/17/12	6/12/2012
CABINE	DENNIS	8/6/12	6/12/2012
CLARK	PAMELA	8/6/12	6/12/2012
CRITTENDON	GAIL	8/6/12	6/12/2012
CUNNINGHAM	BENNIE	8/6/12	6/12/2012
CUNNINGHAM	TIMOTHY	7/12/12	6/12/2012
DAVIS	JARVISA	8/17/12	6/14/2012
DOTTERY	DEAUNDRA	8/28/12	6/12/2012
EZELL	MICHELLE	8/17/12	6/12/2012
GOODMAN-HILL	DWENDA	8/28/12	6/14/2012
HARRIS	ELLA	8/6/12	6/13/2012
HATTER	MONYETTE	8/6/12	6/12/2012
HENDERSON	NETTIE	8/6/12	6/14/2012
JASTRZEMSKI	ROXANNE	7/1/12	6/13/2012
JOHNSON	ELEANOR	8/28/12	6/12/2012
JONES	RUBY	8/17/12	6/14/2012
KABAT	DEBORAH	8/17/12	6/13/2012
KING	CORTNEY	8/6/12	6/12/2012
MARTINEZ	NINA	7/1/12	6/27/2012
MCCLENDON	KIESHIA	8/17/12	6/12/2012
MCCLUNG	SHIRLEY	8/23/12	6/12/2012
PARHAM-MCDOLE	VENUS	8/17/12	6/12/2012
POLZIN	CARL	8/17/12	6/12/2012
PRINCE	TERESA	8/6/12	6/12/2012
QUINN	KENYA	8/17/12	6/12/2012
ROWE	SHANTA	8/6/12	6/13/2012
RYTHER	REBECCA	8/6/12	6/12/2012

EXHIBIT

tabbles

R-12

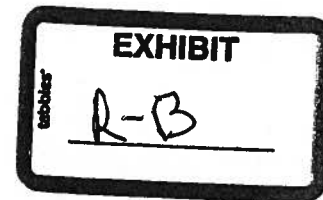
SCOTT	WINNIE	8/6/12	6/12/2012
SCROGGINS	KRYSTIAN	8/17/12	6/14/2012
STIDHUM-STEWART	MILLIE	8/6/12	6/14/2012
UHRICH	DALE	8/6/12	6/12/2012
VALTIERRA	THOMAS	8/6/12	7/19/2012
VAUGHN	MONICA	8/6/12	6/12/2012
WILLIAMS	LUCRETIA	8/17/12	6/12/2012
WILSON	ELIZABETH	8/27/12	6/14/2012
YOUNG	SHARLENE	8/28/12	6/13/2012

Other Drivers and Monitors Hired by First Student Saginaw

Last Name	First Name	Hire Date	<u>Date Received Employee Handbook</u>
Carter	Lawrence	10/04/2012	7/12/2012
Cox	Seeta	08/27/2012	8/9/2012
Currington	Daryl	10/03/2012	8/23/2012
Davis	Ronda	10/24/2012	8/23/2012
Dorsey	Jameisha	09/22/2012	7/14/2012
Johnson	Doris	08/27/2012	8/9/2012
Johnson	Kishna	08/27/2012	8/9/2012
Johnson	Tiffany	08/27/2012	8/9/2012
Kelly	Jamette	08/27/2012	8/23/2012
Lall	Rena	08/12/2012	7/12/2012
McCombs	Jackie	08/27/2012	8/9/2012
McCray	Lynn	08/27/2012	8/9/2012
Metiva	Ronald	08/23/2012	7/12/2012
Miller	Mike	08/17/2012	7/24/2012
Shelton	Shera	09/10/2012	8/23/2012
Smith	Tanya	10/03/2012	8/23/2012



Employee Attendance Policy Saginaw, MI #12635



Revised Effective September 4, 2012

It is the policy of the Company that all Employees report to work punctually and work all scheduled hours. Excessive tardiness and poor attendance disrupt workflow and customer service and may result in disciplinary action up to and including the termination of employment.

The Company reserves the right to add to, amend, delete from or otherwise alter any of the provisions in this document at any time, for any reason, with or without notice to its employees. This document is intended to be a guideline for performance management, and is not a contract of employment. This document super cedes all other prior attendance guidelines. It applies where there is no conflicting applicable federal or state law, First Group America policy, employment contract or collective bargaining agreement.

FIRST STUDENT is contractually obligated to provide on-time delivery of students, and transportation for charter customers. When an employee is absent or late, there is considerable difficulty in meeting these obligations. The following information will clarify attendance guidelines, to enable employees to make appropriate decisions when unable to report for any scheduled work or shift.

Starting Times: The Location Manager or designated representative will notify all employees of their starting and ending times and their work schedules. Employees are required to be engaged in carrying out their duties, be available for work during all scheduled work times and to be ready to begin work at the scheduled starting time. Location Managers and immediate supervisors will maintain records of absences, tardiness and early departures.

Employee Responsibility:

- Be at work on time each day;
- Check in and out at the beginning and at the end of the workday, in the manner designated by the Location Manager or immediate supervisor;
 - **Note: Failure to check in or out may result in disciplinary action.**
- When unavoidably late or absent, the employee must personally notify his/her supervisor directly no later than sixty (60) minutes prior to start of the scheduled workday.
 - **Note: Failure to call at least sixty (60) minutes of the start of the shift will be considered a "No-Call-No-Show" for the purpose of this policy, and will render the employee subject to disciplinary action unless the company determines that there was a reasonable cause for the failure to call.**
- An adult member of the immediate family, or medical professional, may place the call if the Employee is physically unable to do so. The notification should include a reason for the absence and an indication of the time of return. If the Location Manager or immediate supervisor is unavailable, notification may be given to relief dispatcher on duty. Thereafter, it should be followed up with a call to the Location Manager or designated management representative;
- Provide the reason for being late or absent, as well as the length of time or number of runs/trips that will be affected, and when the Employee can be expected to report to work.

Medical Certification: If required to be absent for more than one (1) day, employee must call the Location Manager daily, unless otherwise instructed by the Location Manager. Absences longer than three (3) days with a written doctor's certification will not require daily calls to the Location Manager.

- Employees are required to provide a doctor's certification of fitness for duty, when returning from absences of more than three (3) days;
- Medical certification must indicate the dates during which they were under doctor's care and that the absence was medically necessary;
- Family Medical Leave should be applied for, if the absence was or will be more than three (3) days, and the employee meets the qualifications for length of service, hours worked and other FMLA requirements;
- Employees who provide false information regarding an absence are subject to disciplinary action including the possibility of termination of employment.

Definitions:

Occurrence: Any absence of one or more consecutive days for the same cause, or one tardy incident or one early departure day. This includes attendance for mandatory safety meetings. Occurrences will be considered chargeable toward the attendance progressive discipline guidelines.

**Chargeable Absence:**

- Any absence from regularly scheduled work, scheduled overtime, or a scheduled run (AM, Mid-day, or PM) – will each count as one-half (1/2) of a chargeable absence not to exceed 1.0 absences in one (1) day.
- Mid-day chargeable absences = one-half (1/2) of a chargeable absence.
- Tardiness or leave early (5 min or more) = one-half (1/2) of a chargeable absence.
- Absences of one (1) to three (3) consecutive days for the same documented illness or circumstance = one (1) occurrence.
- Absences of more than three (3) consecutive days will be evaluated on a case-by-case basis by the Location Manager and submitted to the Area General Manager or Region Human Resources Manager for final approval of number of absences. This to include approved time off.

Non-Chargeable Occurrence:

- Jury Duty
- Military Duty
- Bereavement (as defined by FS policy)
- Worker's Compensation
- Family Medical Leave Act absences.

Tardiness: Failure to report at scheduled work time.

Early Departure: Clocking out or leaving workplace before scheduled end of workday/shift without management permission.

Attendance Disciplinary Guidelines

Counseling/Discipline - The following progressive discipline steps will be taken as a result of chargeable absences accumulation within a rolling twelve (12) month period:

Step 1 – Two (2) Chargeable Absences – Verbal counseling (documented) and review of attendance record and policy with Location Manager or immediate supervisor.

Step 2 – Four (4) Chargeable Absences – Disciplinary letter (written warning) and review of attendance record and policy with the Location Manager or immediate supervisor.

Step 3 – Six (6) Chargeable Absences - Disciplinary suspension (3 days), written warning, and review of attendance record and policy with Location Manager or immediate supervisor.

Step 4 – Seven (7) Chargeable Absences – Last Chance Letter (“termination for next violation”) including disciplinary suspension (5 days).

Step 5 – Eight (8) Chargeable Absences – Termination of employment.

No Call–No Show (NCNS) Discipline

Definition: Any route (morning, mid-day or afternoon) of NCNS in which an employee fails to call in to report an absence or show up for scheduled work is equal to one (1) chargeable No Call-No Show absence.

Step 1 – One (1) No Call-No Show – Disciplinary letter (written warning) and review of attendance record and policy with Location Manager or immediate supervisor.

Step 2 – Two (2) No Calls-No Shows – Disciplinary suspension (3 days), written warning, and review of attendance record and policy with Location Manager or immediate supervisor.

Step 3 – Three (3) No Calls-No Shows ** – Termination of employment.

**** Three (3) consecutive No Call-No Show absences will result in termination of employment.**

TAB 7

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

FIRST STUDENT INC., A DIVISION OF
FIRST GROUP AMERICA

and

Case 07-CA-092212

LOCAL 936, UNITED STEEL, PAPER
AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION (USW) AFL-CIO

Jennifer Brazeal, Esq.

for the General Counsel.

David Kadela and Erik Hult, Esqs.

for the Respondent.

Emma Rebhorn and Stuart Israel, Esqs.

for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARK CARISSIMI, Administrative Law Judge. This case was tried in Saginaw, Michigan, on July 24-26, 2013. Local 936, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) AFL-CIO (Local 936), filed the charge on October 29, 2012, and the Acting General Counsel issued the complaint on April 30, 2013.

On the entire record, including my observation of the demeanor of the witnesses,¹ and after considering the briefs filed by the General Counsel, the Charging Party, and the Respondent I make the following

¹ In making my findings regarding the credibility of witnesses, I considered their demeanor, the content of the testimony, and the inherent probabilities based on the record as a whole. In certain instances, I credited some but not all, of what the witness said. I note, in this regard, that "nothing is more common in all kinds of judicial decisions than to believe some and not all" of the testimony of a witness. *Jerry Ryce Builders*, 352 NLRB 1262 fn. 2 (2008), citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), revd. on other grounds 340 U.S. 474 (1951). See also *J. Shaw Associates, LLC*, 349 NLRB 939, 939-940 (2007).

FINDINGS OF FACT

I. JURISDICTION

5 The Respondent, a corporation, with offices and places of business within the State of Michigan, including Saginaw (the Respondent's Saginaw facility) has been engaged in the business of providing student transportation. Annually, the Respondent, in conducting its business operations described above, derives gross revenues in excess of \$250,000. During this same period of time, the Respondent purchased and received at its Michigan facilities goods
10 valued in excess of \$5000 directly from points located outside the State of Michigan.

 The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

 As amended at the hearing paragraph 8 of the complaint alleges that since 1981 through June 2013, the Saginaw School District (School District) recognized the United Steel Workers
20 International Union (USW) and USW, Local 8410 as the collective-bargaining representative of the following employees:

 All regular full-time and regular part-time hourly rated bus drivers and bus assistants employed by the Board of Education of the city of Saginaw, but
25 excluding substitutes and temporary drivers and bus assistants, dispatchers, supervisors, confidential employees, and all other employees.

 Paragraph 8 of the complaint also alleges that this recognition has been embodied in a series of collective-bargaining agreements with the School District, the most recent of which by
30 its terms was to be effective from August 27, 2010, to August 31, 2012. Paragraph 8 of the complaint further alleges that since June 2013 the USW designated USW, Local 936 to represent the employees in the unit described above, along with the USW. (GC Exh. 19.)

 In his post- hearing brief the General Counsel² moves to amend paragraph 9(b) of the complaint to allege "From about February 19, 1981 through June 2013 Local 8410, a USW
35 affiliate and USW were the exclusive collective bargaining representatives of the unit employed by Respondent. Since June 2013, Local 9036, a USW affiliate and USW were the exclusive collective bargaining representatives of the unit employed by Respondent." The General Counsel further moved to amend paragraph 9(c) of the complaint to allege "During the relevant time
40 periods described in paragraph 9(b), USW, Local 8410, and Local 9036, based on Section 9(a) the Act have been the exclusive collective bargaining representatives of the Unit employed by Respondent." (GC brief at 3 fn.2.) The General Counsel asserts that, as originally pled,

² I have taken administrative notice of the fact that on October 29, 2013, the United States Senate confirmed President Obama's nomination of Richard F. Griffin Jr., to be the Board's General Counsel and that he was sworn in on November 4, 2013.

paragraphs 9(b) and(c) are inconsistent with the amendment made at the hearing to paragraph 8.³ The General Counsel further contends that the amendment to paragraph 9 conforms to the evidence presented in the case.

5 The Respondent objected to the amendment to the complaint made at the trial and further objects to the post and complaint amendment. For reasons which I will explain in detail herein, I granted the amendments made at the hearing and I also grant the amendment made in the General Counsel's brief.

10 The complaint alleges in paragraph 6 that since about June 1, 2012, the Respondent contracted with the School District to provide student transportation services and since that time has continued to provide those services in basically unchanged form and has employed as majority of its employees individuals who were previously employees of the School District. Paragraph 6 of the complaint further alleges that the Respondent is a successor to the School
15 District.

 Paragraph 13 of the complaint alleges that on or about May 17, 2012, the Respondent implemented changes in the wages, hours, and other working conditions of unit employees. The complaint also alleges that on August 27, 2012, the Respondent implemented a new employee
20 attendance policy. The complaint alleges that these changes were implemented unilaterally and therefore violate Section 8(a)(5) and (1) of the Act. The complaint also alleges that on or about May 17, 2012, the Respondent bypassed the Union and dealt directly with employees in the Unit in violation of Section 8(a)(5) and (1). The General Counsel's theory regarding the complaint allegations relating to May 17, 2012, is that the Respondent engaged in conduct that made it
25 "perfectly clear" that it planned to retain all of the employees in the unit and therefore had an obligation to initially consult with the employees' bargaining representative before establishing terms and conditions of employment. In support of this theory, the General Counsel relies on inter alia, *NLRB v. Burns International Security Services*, 406 U.S. 272, 294-295 (1972) and *Spruce Up Corp.*, 209 NLRB 194, 195 (1974), enfd. mem. 529 F.2d 516 (4th Cir.1975).
30

 The complaint further alleges that the Respondent unreasonably delayed bargaining from May 18, 2012, to October 15, 2012, in violation of Section 8(a)(5) and (1). Finally, the complaint alleges that on about October 1, 2012 the Respondent insisted on the withdrawal of an unfair labor practice charge as a condition to engaging in bargaining in violation of Section 8(a)(5) and
35 (1).

 The Respondent admits that it is a successor employer to the School District but denies that it is a "perfectly clear" successor within the meaning of *Burns* and *Spruce Up*, supra, and further denies that it committed any of the alleged unfair labor practices.
40

The Amendments to the Complaint

 Section 102.17 of the Board's Rules and Regulations permits complaint amendments upon terms that may be just. The Board evaluates the following factors in determining whether to

³ As originally pled, paragraphs 9(b) and (c) allege that since about June 1, 2012, Local 9036, has been the exclusive bargaining representative of the unit employees

grant an amendment to the complaint: (1) whether there was surprise or lack of notice, (2) whether the General Counsel offered a valid excuse for the delay in moving to amend, and (3) whether the matter was fully litigated. *Stagehands Referral Service, LLC*, 347 NLRB 1167, 1171 (2006); *Cab Associates*, 340 NLRB 1391, 1397 (2003).

In the instant case, on July 19, 2013, 5 days prior to the commencement of the trial, the Respondent filed an amended answer denying the portions of the complaint in paragraphs 8 and 9, alleging that Local 9036 was designated representative of the unit employees from 1981 until the present. At the hearing, as noted above, the General Counsel amended paragraph 8 during the case in chief. This amendment was consistent with the evidence presented on this issue. In particular, the collective-bargaining agreement effective August 27, 2010, through August 31, 2012, indicates that it is “between the Board of Education of the City of Saginaw and United Steel Workers, AFL-CIO-CLC, on behalf of Local 8410-01, (hereinafter referred to as the “Union”).” (GC Exh. 2) The signature page of that document reflects that it was executed by representatives of both the United Steel Workers International Union (USW) and Local 8410-01. Before the General Counsel rested, significant additional evidence was presented as to how and when the representation of unit employees was transferred by the USW from the jurisdiction of Local 8410 to that of Local 9036. Accordingly, it is clear that the Respondent had a fair opportunity to defend itself against paragraph 8 of the complaint as amended and that it was appropriate to grant the amendment to the complaint.

With respect to the General Counsel’s motion to amend paragraph 9 of the complaint contained in his brief, the Respondent contends that it should be denied under the standards of *Stagehands Referral Service* and *Cab Associates*, supra. With regard to the first factor, the amendment made in the General Counsel’s brief could hardly be surprising to the Respondent as it merely made the allegations of paragraph 8 and 9 consistent with each other. With respect to the second factor, the General Counsel admits it was an oversight not to have made the amendment to paragraph 9 at the hearing. While it would have been preferable for the General Counsel to have made the amendments to paragraph 9 at the hearing, I do not find that moving to amend paragraph 9 in the brief prejudiced the Respondent as I have carefully considered the Respondent’s memorandum in opposition to the General Counsel’s motion. Finally, as noted above, the issue of the representative status of the USW, Local 8410 and Local 9036 was extensively litigated at the hearing. Accordingly, I find it appropriate to grant the amendment to paragraph 9 of the complaint.

The Respondent has denied the substantive allegations in the amended complaint regarding the representative status of the USW, Local 8410 and Local 9036.

The Representative Status of the USW, Local 8410 and Local 9036

Although the complaint as amended alleges that the School District and the USW and Local 8410 have had a collective-bargaining relationship since 1981, the General Counsel produced no evidence regarding the bargaining history prior to 2010. As noted above, the 2010-2012 collective-bargaining agreement is between the School District and the “United Steelworkers, AFL-CIO-CLC on behalf of Local 8410-01, (hereinafter referred to as the “Union”). Also, as noted above, the signature page of collective bargaining agreement reflects

the signatories as the Saginaw Board of Education, the USW, and Local 8410-01. The record establishes that there were approximately 55 employees in the unit.

5 The Board has held that when an international union and its affiliated local union are signatories to a collective-bargaining agreement, both the international union and its affiliated local are joint representatives of the employees covered by the collective-bargaining agreement. *BASF-Wyandotte Corp.*, 276 NLRB 498, 504-505 (1985). Accordingly, based on the contract between the School District and the USW and Local 8410, I find that the USW and Local 8410 were the joint representatives of the employees in the unit from at least August 27, 2010, until 10 the unit employees were transferred to the jurisdiction of Local 9036 in June 2013.

15 The USW constitution specifically permits the USW to transfer all or part of the jurisdiction of a local union to another local union (CP Exh. 3). According to the uncontroverted testimony of USW Representative Tonya DeVore, Local 8410 is an amalgamated local union that represents severed several units. 8410-01 is the unit identifier for the employees in the unit that was employed by the School District. When the Respondent took over the operation of the bus services of the Saginaw public schools in July 2012, the unit employees were no longer public employees. In the fall of 2012, the USW began the process of transferring the unit employees from Local 8410 to Local 9036, which represents both public and private employees. 20 The decision to transfer unit employees from Local 8410 to Local 1936 was based primarily on the fact that the officials of Local 8410 had no experience in preparing the necessary administrative documents required of a union representing private sector employees. Of particular concern to the Local 8410 officials was the LM-2 report that is required to be filed with the U.S. Department of Labor pursuant to the Labor-Management Reporting and Disclosure Act. 25

30 According to the uncontroverted and credited testimony of DeVore and Clint Bryant, a current employee of the Respondent,⁴ meetings were held with unit employees in October and November 2012 regarding the transfer of the unit from Local 8410 to Local 9036. At the meeting held in October 2012, approximately 30 employees were present while approximately 25 employees attended the meeting in November. At these meetings DeVore told employees that the officials of Local 8410 had concerns about their ability to fill out the paperwork required of a union representing private sector employees. DeVore further indicated that Local 9036 represented both private sector and public sector employees and she thought that Local 936 35 would be a “better fit” for the unit employees since they now worked for a private employer. The employees present at the meetings had no objections to the transfer of their unit from one local union to another.

40 On May 29, 2013, Michael Bolton, the director of USW District 2, wrote a letter to Stan Johnson, the USW secretary-treasurer formally requesting that, pursuant to the USW constitution, the Respondent’s unit employees who had been formerly been employed by the School District be transferred to Local 9036. The letter also indicated that DeVore would continue to provide services to the unit employees. The letter further indicated, in relevant part, that:

⁴ Bryant was formerly the unit president for Local 8410 and is presently the unit president for Local 9036. The unit president is the highest ranking union official in the bargaining unit.

5 The reason for the request is that the members in the unit were previously public school workers, and were outsourced to a private sector firm. Amalgamated Local 8410 had no private sector units prior to this change and the requested new unit will be part of an amalgamated local with both private and public units. Also the primary unit of Local 9036 is composed of passenger bus drivers, and the new unit is composed of school bus drivers.

10 On June 5, 2013, the USW transferred the Respondent unit employees to Local 9036 (CP Exh. 4). On approximately June 5, 2013, DeVore, Bryant, and Jennifer Wirrick, the president of Local 9036 attended a meeting with the unit employees of the Respondent at the Saginaw facility's bus garage. The unit employees were informed that Local 9036 would be their new local and were asked to sign dues checkoff cards for Local 9036. Approximately 43 of the 45 employees present at the meeting signed dues checkoff cards. As of the time of the hearing those
15 checkoff authorizations had not been provided to the Respondent.

20 As I noted above, the Respondent admits that is a successor to the School District with regard to bus transportation services and began to bargain with the USW and Local 8410 in October 2012. DeVore is the chairperson of the Union's negotiating team. At a bargaining meeting held in approximately January or February 2013, DeVore notified the Respondent's chief representative, Audrey Adams, that the local union number would be changing because the employees were going from a local union that represented solely public employees to a local union that represented both public and private employees. The Respondent did not indicate any objection to that procedure at the meeting. From June 2013 until the hearing was held in July
25 2013 there were two additional bargaining meetings. None of the Respondent's representatives present at the meeting raised any objection to the transfer of the unit employees from one local union to another.

30 It is clear that USW representative DeVore was involved in the affairs of the bargaining unit as it underwent the transition from the School District to the Respondent. She was also deeply involved in the transition of the unit from Local 8410 to Local 9036. In addition, DeVore has been the chairperson of the Union's negotiating team since negotiations began with the Respondent in October 2012, when local 8410 was the joint representatives of the unit employees and continued in that role after June 5, 2013, when the unit employees were
35 transferred to Local 9036. Such active participation by a USW representative in the affairs of a local union establishes that since June 5, 2013, the USW and Local 9036 have been the joint representatives of the unit employees. *BASF-Wyandotte*, supra at 505.

40 Based on the foregoing, I find that since at least August 27, 2010, until June 5, 2013, the USW and Local 8410 were the joint representatives of the unit employees. Since June 5, 2013, until the present the USW and Local 9036 have been the joint representatives of the unit. In reaching this finding I rely on the Board's decision in *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143 (2007). In that case, the Board indicated that :

45 [W]hen there is a union merger or affiliation an employer's obligation to recognize and bargain with the incumbent union continues unless the changes

resulting from the merger or affiliation are so significant as to alter the identity of the bargaining representative. Id. at 147

5 It is the burden of the party seeking to avoid its bargaining obligation to establish that the merger or affiliation resulted in a change that is “sufficiently dramatic” to alter the union’s identity. Id. at 147.

10 It is clear that in the instant case the employer has not met that burden. Based on the foregoing, there has been substantial continuity in the representation of the unit by the USW and Local 8410 before the transfer of the unit and the USW and Local 9036 after the transfer of the unit. Accordingly, references to the “Union” in this decision refer to the USW and Local 8410 prior to June 5, 2013, and the USW and Local 9036 after June 5, 2013.

15 The Respondent’s Procedural Defenses

The Respondent contends in its brief that the complaint must be dismissed pursuant to Section 10(b) or because Local 9036 did not represent the unit employees until over 7 months after it filed its charge.

20 The charge was filed on October 29, 2012, by the “United Steelworkers Local 9036” and alleges in substance that the Respondent was a “Perfectly Clear successor to Saginaw Public Schools” which unilaterally changed terms and conditions of employment; delayed bargaining with the “Union” and conditioned bargaining with the “Union” on the withdrawal of an unfair labor practice charge in violation of Section 8(a)(5) and (1). Listed on the charge was the fact
25 that Local 9036 is affiliated with the “United Steelworkers.” The 10(b) period regarding this charge commenced on April 29, 2012.

30 The fact that the charge was nominally filed by Local 9036 before it became the joint representative of the unit employees along with the USW, is of no significance as it is clear that “any person” may file a charge with the Board. Section 102.09 of the Board’s Rules and Regulations; *Apex Investigation & Security Co.*, 382 NLRB 815, 818 (1991).

35 Is also clear that a charge is not a pleading and does not require the specificity of a complaint. A charge merely initiates a Board investigation to determine whether a complaint should be issued. *NLRB v. Fant Milling Co.*, 360 U.S. 301, 307 (1959). The charge in the instant case notified the Respondent of the substantive allegations set forth above and refers to the “Union.” As I set forth above, the “Union” until June 5, 2013, was comprised of the USW and Local 8410 and after June 5, 2013, was comprised of the USW and Local 9036. There has been continuity of representation throughout the entire 10(b) as the USW has always been one of the
40 joint representatives of the unit employees. The transfer of the unit from Local 8410 to Local 9036 did not in any way change the continuity in representation.

45 Is also clear that a complaint is not restricted to the precise allegations of a charge. Rather, a complaint may allege any matter sufficiently related to or growing out of the charged conduct. *Fant Milling*, supra at 309. As originally issued, all of the substantive allegations of the complaint were within the 6 month time period required by Section 10(b) but only made reference to Local 9036 as the Section 9(a) representative of the unit employees. However, as

finally amended, the complaint properly alleged the appropriate 9(a) representative as the USW and Local 8410 until June 2013 and the USW and Local 1936 after June 2013. The specific addition of the USW and Local 8410 as the 9(a) representative during the appropriate time period is closely related to the allegations of the charge under the standards applied in Board's decision in *Redd-I, Inc.* 290 NLRB 1115, 1115-1116 (1988). In this connection, the complaint amendments involved the same legal theory as the charge and arise from the same factual circumstances alleged in the charge. As I have discussed above in detail, the complaint was amended in a manner that permitted the Respondent to adequately defend itself against the amendments. Based on the foregoing, I find no merit to the procedural defenses raised by the Respondent and will address the merits of the amended complaint.

Whether the Respondent is a "Perfectly Clear" Successor Which Violated Section 8(a)(5) and (1) by Unilaterally Establishing Initial Terms and Conditions of Employment and Directly Dealing with Employees

Facts

Background

The Respondent is headquartered in Cincinnati, Ohio, and is the largest provider of school transportation services in the North America. In the United States the Respondent employs over 59,000 employees and transports approximately 6 million students. In Michigan, the Respondent provides transportation services in 18 school districts and operates approximately 1000 buses.

The July 2011 Meeting and Aftermath

In the summer of 2011 the School District issued a request for proposals (RFP) seeking bids regarding the privatization of its school transportation system. The Respondent and two other entities submitted proposals. In July 2011, the School District conducted an interview with the Respondent regarding its proposal. Representatives of the School District included Dr. Kelley Peatross; the assistant superintendent of schools, Phoebe Wood, the School District's chief financial officer; and Robert Bradley, the School District's then facilities manager. The Respondent's development manager Daniel Kinsley and another manager, Justin Grygiel, attended for the Respondent. At the invitation of Peatross, USW representative DeVore was present at the interview. No unit employees were present at this interview.

Peatross and DeVore testified regarding this meeting on behalf of the General Counsel, while Kinsley and Bradley testified on behalf of the Respondent. For the most part, there was not much of a much variance in the testimony of the witnesses regarding this meeting. Based on a composite of their testimony, I find that Kinsley stated that the Respondent would hire the bargaining unit employees if they met the Respondent's hiring criteria which included an application, an interview, a background check, a drug screen, and some other tests. Kinsley stated that the Respondent would maintain the current wages and planned to raise wages in the future. When Kinsley was asked whether the Respondent would recognize the Union, he

indicated that the Respondent would recognize the Union if it hired 51 percent or more of the School District's employees.⁵ Kinsley further indicated that it was the Respondent's intention to hire a majority of the School District's employees if they met the Respondent's hiring protocols. Kinsley also stated that at other locations the Respondent had hired 80 to 90 percent of the existing unit.

After the meeting, Woods prepared two documents summarizing the proposal made by the Respondent and the two other entities that had submitted proposals (GC Exh. 3 and CP Exh. 2). They are very similar but not identical documents. The summaries were provided to employees by the School District and were made available to the public at Board of Education meetings. Peatross gave a copy of CP Exh. 2 to DeVore.

Both the General Counsel and the Charging Party contend that these exhibits are probative but I find them to be of minimal value. The documents are Wood's summary of what each entity stated during their individual interviews. The accuracy of the summaries is questionable. For example, with respect to the summary involving the Respondent in GC Exh. 3, under the heading "Union" the document indicates "Will recognize union." Under the same heading, CP Exh. 2 states "The union will be recognized." Peatross testified on direct examination that the summaries accurately reflected what the Respondent's representatives stated at the meeting (Tr. 358). On cross-examination, however, Peatross testified that with respect to the portion of the summary in GC Exh. 3 that states "Will recognize union" it was her understanding that would occur on the condition of the Respondent hiring a majority of the School District's employees (Tr. 378). As noted above, Peatross also testified that she recalled that the Respondent's representatives stated at the meeting that after hiring the majority of the existing work force, it would recognize the union (Tr. 377). Thus, Peatross' testimony regarding the accuracy of the summary was equivocal and conflicts with her testimony that at the meeting the Kinsley stated that the Respondent would recognize the union if it hired a majority of the School District's employees. In addition, Kinsley testified that the summaries were missing important qualifications on relevant topics. For example, Kinsley testified that with regard to the reference to the recognition of the Union in GC Exh. 3 the summary was missing the qualifier that he stated at the meeting that the Respondent would recognize the Union if it hired 51 percent or more of the School District's employees (Tr. 474). Since Kinsley's testimony on what he said at the meeting is corroborated by both that of Peatross and Bradley, I find his testimony that the summaries were not entirely accurate to be credible.

Under these circumstances, I find that the summaries prepared by Woods are not complete statements of what the Respondent stated at the meeting. I find these documents to be too unreliable to base any findings on them.

In October 2011, the School District selected the Respondent as a provider of its bus services and the School Board voted to approve a contract. However, Dr. Carleton Jenkins, the School District's superintendent, decided not to proceed with subcontracting bus services at that time. In

⁵ Kinsley, Bradley and Peatross all testified that Kinsley answered the question about recognizing the Union in the same manner. DeVore testified that when asked if the Respondent would recognize the union, Kinsley answered "yes" without any further qualification. I do not credit DeVore's testimony on this point as it conflicts with that of Bradley and Peatross, who I view as neutral witnesses.

November 2011, the School District withdrew its RFP and notified the Respondent that it would not proceed with subcontracting bus services during the 2011-2012 school year.

The March 2, 2012 Meeting

5 Pursuant to a new RFP issued by the School District regarding the subcontracting of school bus transportation for the 2012-2013 school year, on February 3, 2012, the Respondent submitted a new proposal to the School District. The Board of Education again approved entering into negotiations with the Respondent for a contract. While those negotiations were
10 ongoing, Peatross arranged for a meeting between the Respondent's representatives and School District employees that was held on March 2, 2012, at the School District's transportation facility. All of the School District's unit employees were invited to attend the meeting and approximately 40 attended. Peatross attended for the School District. Robert Bradley also attended the meeting. At the time of the meeting Bradley was the general manager for Sodexo,
15 which, pursuant to a contract, provided custodial and maintenance services to the School District. Prior to going to work for Sodexo in September 2011, Bradley had been employed by the School District as the operations manager for those functions. Attending for the Respondent were Kinsley and the Respondent's area general manager, Douglas Meek.

20 Peatross and current unit employees Millie Stidhum-Stewart and Michelle Ezell, testified on behalf of the General Counsel regarding this meeting. Bradley, Meek, and Kinsley testified on behalf of the Respondent.

25 According to Peatross, the purpose of the meeting was to discuss the transition of the school bus services from the School District to the Respondent and to allow the employees to ask questions they may have. Peatross introduced Kinsley and Meek to the assembled employees. The Respondent's primary spokesman, Meek, spoke about what the employees could expect in the upcoming weeks in anticipation of a final contract being reached between the School District and the Respondent.

30 Meek testified that he told the employees that they would be receiving an application form at a future meeting if a contract was reached between the Respondent and the school district. He stressed that the application had to be filled out completely. Meek indicated that he and another one of the Respondent's managers would be present to answer questions when the
35 employees receive their application. Meek stated that after the completion of the application and the necessary background checks, applicants would be subject to a preemployment drug screen, a physical examination and receive training. Meek stated that after completion of these requirements the Respondent would offer employment to existing employees who met their criteria.

40 After Meek's initial presentation, employees were permitted to ask questions. When asked how many employees would be hired, Meek indicated that in a conversion between a public school transportation system and the Respondent's operation, the Respondent typically hired 80 to 90 percent of the existing work force. Meek testified that he told the employees that if
45 the workforce was represented and the Respondent hired 51 percent of the existing work force as its own, the employees would bring their representation with them and a new contract would be negotiated.

When asked about how many hours were going to be guaranteed to employees, Meek responded that the Respondent would use the School District's routing system but that the Respondent did not know how many hours would be worked at that time. He indicated that the Respondent would no more when the routes were established. In response to other questions regarding the conditions employees would work under if hired by the Respondent, Meek stated that those issues would be subject to negotiations.

Kinsley testified that Meek stated that the applications for employment would have to be complete and that employees who applied for work with the Respondent would be subject to a background check, a dexterity test, a drug screen and receive training. According to Kinsley, Meek said that if the Respondent hired 51 percent or more of the current work force, the Respondent would bargain in good faith regarding new terms and conditions of employment. Kinsley further indicated that questions were posed to Meek regarding issues such as paid time off, vacation pay and sick pay and that Meek responded by saying those items would be subject to negotiations.

Bradley, who testified pursuant to a subpoena issued by the Respondent, recalled that employees asked questions about the number of hours they would work. According to Bradley, Meek explained that until the routes were determined, the Respondent would not know the number of hours that would be worked by employees. While Bradley did not recall the specific subjects that were raised by employees, he recalled Meek stating that certain matters would be subject to negotiations.

Peatross testified that in response to a question by an employee, Meek stated that the Respondent would recognize the Union if it hired 50 percent plus one of the School District's employees as its employees. Peatross also recalled that Meek did not make any commitment to the number of hours the employees would work but stated that the Respondent would have to look at the routes in order to determine the hours that would be provided to employees. While Peatross did not recall the specific topics that were raised by employees, she recalled Meek stating that certain subjects would be subject to negotiations.

Stidhum-Stewart testified that Meek was present along at the meeting along with the Respondent's human resources manager Frederick Kellerman. Stidhum-Stewart further testified that "another guy" and a "lady" attended the meeting for the Respondent. According to Stidhum-Stewart, in response to a question from an employee as to whether the Respondent would recognize the Union, Meek responded that the Respondent would recognize the Union if it hired 50 percent plus one of the current employees. Stidhum-Stewart also testified that, in response to questions from employees, Meek said the duties of the unit employees would remain the same as would the wages and benefits.

Michelle Ezell testified that Meek, Kinsley, and Kellerman were at the meeting for the Respondent. Ezell also recalled that Meek responded to questions about recognizing the Union by saying that the Respondent would do so if it hired 50 percent plus one of the current employees. According to Ezell, Meek said that there was going to be a smooth transition and that the Respondent would "honor our contract," go by seniority and that their insurance would be cheaper. Ezell could not recall near the specific issues that were raised by employees.

I find the testimony of Meek to be the most reliable account of this meeting and I credit the portion of his testimony set forth above. It is detailed and consistent and it is corroborated in important respects by the testimony of Peatross, Kinsley, and Bradley. I do not credit the testimony of Stidhum-Stewart and Ezell to the extent it conflicts with that of Meek. In the first instance, both Stidhum-Stewart and Ezell place Kellerman at this meeting when the record clearly establishes that the first time that Kellerman met with employees occurred on May 17, 2013. The testimony of Stidhum-Stewart and Ezell did not have much detail and their demeanor while testifying reflected a lack of certainty. In addition, the testimony of Stidhum-Stewart and Ezell was not corroborated by the testimony of Peatross, who also testified on behalf of the General Counsel.

The May 16, 2012 Board of Education Meeting

The representatives of the School District and the Respondent agreed on the terms of a transportation services contract in early May 2012. At the Board of Education's regularly scheduled, public May 16, 2012 meeting, one of the items on the agenda was the approval of the terms of the contract between the Respondent and the School District. Prior to the meeting Peatross advised DeVore that the proposed contract was on the agenda. Peatross also advised Kinsley of that fact and invited him to attend the meeting. Kinsley, DeVore, Bryant, and approximately five other bargaining unit employees attended the meeting, along with members of the public.

Bryant, DeVore, and Peatross testified on behalf of the General Counsel regarding this meeting, while Kinsley and Bradley testified for the Respondent.

Bryant testified that at the at the meeting one of the members of the Board of Education asked School District Superintendent Jenkins what the wages of the employees would be if the if the Respondent operated the transportation services. Jenkins referred the question to Bradley who, in turn, referred the question to Kinsley. Kinsley took the podium to answer and stated that employees would maintain their current wages. Another board member asked if the Respondent intended to hire the current employees employed by the School District. Kinsley said that much like the school district, employees would have to go through a background check, a drug screen, and pass a physical. Kinsley stated that f the employees met those prerequisites they would be hired. DeVore asked Kinsley if the Respondent would recognize the Union. Since, according to the rules of the meeting, only board members could ask questions, a board member then asked Kinsley if the Respondent would do so. Kingsley responded that the Respondent would recognize the Union. According to Bryant, Kingsley did not identify any conditions of employment that may change during the meeting.

DeVore testified that when Kinsley was asked by a board member about hiring the School District's employees, he responded that if the employees met the Respondent's hiring practices, it would hire them. He further indicated that the hiring practices consisted of having a commercial driver's license (CDL), undergoing a background check, a drug screen, and a physical. He added that those requirements "would not be a problem." According to DeVore, when Kinsley was asked about wages he stated that "everything would be the same."

Peatross also testified that Kinsley answered questions at the meeting that were posed by members of the School Board. According to Peatross, Kinsley said that the Respondent would offer positions to the existing employees who satisfied the Respondent's hiring requirements such as background checks and physical exams. In response to a question about the wages that the Respondent would offer, Kinsley replied that the Respondent would hire current district employees at the same rate of pay. When asked if the Respondent would recognize the Union, Peatross testified that Kinsley stated that the Respondent would recognize the Union upon hiring 51 percent of the employees.

Kinsley confirmed that he was asked questions by board members at the meeting. With respect to a question regarding whether the Respondent would recognize the Union, he responded that the Respondent would recognize the Union if it hired 51 percent or more of the existing work force. With regard to the Respondent's hiring process, Kinsley testified that he indicated that employees would have to submit applications, have background checks and drug screens conducted, be interviewed, and perform dexterity tests. When asked what the wages would be, Kinsley stated that the Respondent intended to maintain the wages for the current work force. He denied saying that "everything would remain the same." Kinsley testified that he did not say what terms and conditions would change when the former School District employees became the Respondent's employees because that was not a question he was asked.

Bradley testified that Kinsley was asked a question at the meeting about whether the Respondent would recognize the Union. According to Bradley, Kinsley stated that if the Respondent hired 51 percent of the employees they would have to recognize the Union. When asked whether the Respondent would hire the existing employees, Kinsley answered that they would offer all of the employees a position as long as they completed the process involving the background checks, the physical examination, and drug screens.

I credit the testimony of Kinsley, Peatross, and Bradley to the extent that it conflicts with that of DeVore and Bryant. The testimony of Kinsley, Peatross, and Bradley is mutually corroborative and Peatross and Bradley are neutral witnesses. The demeanor of all three witnesses reflected certainty about what Kinsley said that the meeting and I find their testimony to be more reliable than that of DeVore and Bryant.

Based on the credited testimony, I find that at the May 16, 2012 meeting in response to questions asked by various Board members, Kinsley stated the Respondent would hire School District employees if they submitted applications and met the Respondent's hiring criteria which included a background check, a drug screen, an interview, and dexterity tests. Kinsley also indicated that the Respondent would hire the current School District employees at the same rate of pay. Finally, he indicated that the Respondent would recognize the Union if it hired 51 percent or more of the existing work force.

At this meeting the Board of Education voted to approve the contract between the Respondent and the School District. While the contract provides that "The District and Provider have agreed to the terms of this agreement as of the 16th day of May, 2012" (GC Exh. 17, p. 17) the contract was actually executed by representatives of the School District and the Respondent on May 24, 2012, and June 1, 2012, respectively. The contract provides that it is effective from July 1, 2012, through June 30, 2017. The value of the entire contract is \$9,519,420 (GC Exh. 4).

At the conclusion of the School Board meeting, Bryant, DeVore, and four other employees were in the parking lot outside the building. Bryant testified that Kinsley was walking toward them and as he approached the group, Kinsley put his arm around one of the employees in said "don't worry, everything will be fine." According to Bryant, DeVore then asked Kinsley if the Respondent would recognize the Union and Kinsley responded "yes" and "welcome to First Student." DeVore testified that Kinsley approached the group and said "don't worry. Everything will be okay. This is going to be smooth." He added that he understood why employees were hesitant but that everything was going to be okay and added that "everything will be the same." DeVore testified that she asked Kinsley whether the Respondent would recognize the Union and he responded "yes we will, we're Union friendly." He added "We have a master agreement with the Teamsters, it is not a problem."

Bradley and Kinsley also testified regarding this brief meeting in the parking lot. According to Bradley, he and Kinsley walked out of the building together. Bradley testified that as he and Kinsley walked past the group including DeVore and Bryant, DeVore told Kinsley that the company would be required to recognize the Union if it hired 50 percent plus one and not 51 percent of the current work force and that Kinsley should know that. Bradley testified that he kept walking and did not hear anything further.

Kinsley testified that as he and Bradley approached the group including DeVore and Bryant, DeVore told him that his statement about recognizing the Union if it hired 51 percent or more of the employees was incorrect and he should say that the Respondent would recognize the union if it hired 50 percent plus one of the employees. Kinsley acknowledged that DeVore's statement was correct. Kinsley then stated to the group of employees that the Respondent's goal was to hire as many employees as it could that met all of the Respondent's hiring "protocols." He added that if employees met the Respondent's hiring criteria their wages would be maintained and "they shouldn't have anything to worry about in coming to work for our Company." He denied, however, saying that "everything would remain the same."

To the extent that the testimony of Bradley and Kinsley conflicts with that of DeVore and Bryant regarding this brief meeting, I credit the testimony of Bryant and Kirby. As noted previously, Bradley is an independent witness and his demeanor reflected certainty about how the encounter began. I find Kinsley's version of the conversation to be more plausible than that of Bryant and DeVore. As noted previously I find that Kinsley had indicated at the just concluded Board of Education meeting that the Respondent would recognize the Union if it hired 51 percent of the School District's employees as its employees. I doubt that Kinsley would immediately afterward say that the Respondent would recognize the Union without making any reference to the requirement of hiring a majority of the existing work force. I also note that DeVore acknowledged on cross-examination that her pretrial affidavit did not indicate that Kirby told the group of employees that "Everything would stay the same." (Tr. 268)

The May 17, 2012 Meeting with Employees

On May 17, 2012, the Respondent met with the School District's unit employees at the School District's transportation facility. Present for Respondent were Meek, Kellerman, Kinsley, Char Campbell, a new human resources manager, and John Kiraly, a former School District

supervisor whom the Respondent had hired to be its location manager. Almost all of the School District's transportation employees were present. Peatross and Bradley were also present.

5 Meek briefly discussed the Respondent's operation and management structure. The Respondent then distributed a document, dated May 17, 2012 (GC Exh. 5) to the employees who were present. The opening paragraph of the document indicated:

10 Welcome to First Student. As you know, First Student has been selected as the student transportation provider for the Saginaw Public Schools. We are looking forward to working with you to serve the community.

With respect to the hiring procedure, the memo stated:

15 All current Saginaw Public School drivers and monitors who successfully pass the company's hiring criteria will be offered an employment opportunity with First Student. You are not hired and officially considered an employee of First Student until you successfully meet and pass all the requirements listed below and are extended a formal job offer:

20 Background checks
Employment history checks
Driving history review
Criminal records checks
Physical exam
25 Drug test
Physical Performance Dexterity Test (PPDT)
Completion of training requirements and classroom and behind the wheel evaluations

30 The memo also stated that employees would be given interviews and employment applications had to be completed and returned by May 23, 2012, for an employee to maintain his or her seniority.

35 With regard to pay rates, the memo indicated that school bus drivers and monitors who turned in an application by May 23, 2012, would maintain their current rate of pay and that the hourly rate would also apply for field trips and athletic trips. The memo further indicated that they would be paid a "B" hourly rate for nonstudent transportation duties (i.e. attending training, employer school meetings, clerical work, bus washing, etc).⁶ The memo further indicated that employees would be paid a guarantee of 1½ hours for each a.m. and p.m. shift worked and
40 midday routes would be paid a minimum of one hour. With respect to training, the memo indicated that current School District drivers who complete the Respondent's training program and were hired by it would receive a bonus of \$150 in their initial paycheck. It also indicated that current monitors who completed the Respondent's training program and were hired would receive a bonus of \$75 in their initial paycheck

⁶ The Respondent's August 1, 2012, offer letter to Bryant indicated that his rate of pay would be \$15.23 while driving and \$10 an hour for all nondriving duties (GC Exh. 8).

5 The memo stated that all of the Respondent's driver and monitor positions are considered part time and that benefit programs are designed for a part-time work force. The memo also indicates that the Respondent offered medical, dental, and division insurance plans to its employees and that current drivers and monitors serving in the School District who enroll in the medical insurance plan would receive a company-paid contribution of 80 percent towards employee-only coverage.

10 The memo contained several terms and conditions of employment that differed from those contained in the collective-bargaining agreement between the Union and the School District. Under the collective-bargaining agreement, employees received one hourly wage rate for all of the work they performed regardless of its nature. The pay guarantee was different in that under the collective-bargaining agreement, bus drivers were guaranteed 4.5 hours per day and monitors were guaranteed 4.3 hours per day. Pay for training was also different in that under
15 the collective-bargaining agreement employees were paid their hourly rate for training.

Kellerman reviewed the topics contained in the memo and gave employees an opportunity to ask questions about the information they had received. One of the questions asked was whether the Respondent would recognize the Union. According to Kellerman's
20 uncontroverted testimony, he responded by saying that the Respondent had a neutrality policy toward unions and that if there was an existing union and the Respondent hired 50 percent plus one of the bargaining unit, the union could request recognition. The Respondent also distributed applications for employment to the employees who were present at this meeting.

25 The Initial Discussions Between the Union and the Respondent

On May 18, 2012, DeVore sent a letter to Kinsley on behalf of the "USW International Union; And Its Affiliated Local #8410-01" requesting recognition and bargaining regarding the Respondent's bargaining unit at the Saginaw public schools (GC Exh. 11). On May 21, 2012,
30 DeVore sent an email to Kinsley and Meek, attaching her May 18 letter and requesting that bargaining begin for the Saginaw unit in late May or June 2012. After not receiving a response to her May 21 email, DeVore contacted Meek by phone within 2 weeks of her email and requested that bargaining begin. Meek responded that he would not be handling negotiations but that Audrey Adams, one of the Respondent's attorneys, would be responsible for the negotiations.
35 DeVore called Adams and spoke to her in early June and requested that the parties establish dates for bargaining. DeVore stated that it was her position that the negotiations should start with the existing contract between the Union and the School District.

Adams indicated that the Respondent was in the process of hiring employees at the
40 Saginaw location and added that she did not know at that point if the Respondent would be legally obligated to recognize the Union. Adams told DeVore that the Respondent's contract with the School District became effective in July and that she would not know anything concrete until after that date. DeVore asked if she could call Adams after July 4 to see where the Respondent was in the hiring process. Adams agreed that DeVore could call her at that time. Adams also
45 indicated that she would be taking maternity leave from approximately mid- August to late November. On June 13, 2012, DeVore sent an email to Adams stating that she would call her after July 4 and attaching the contract between the School District and the Union.

At the local level, after the meeting that the Respondent held with employees on May 17, Bryant introduced himself to Kellerman and informed him that he was the unit president of the local union. Bryant also introduced Union Stewards Ken Berry and Shanta Rowe. Pursuant to an email from Kellerman to Bryant requesting a meeting to discuss seniority issues, on June 14, 2017, Kellerman, Kiraly, Bryant, Berry, and Rowe met to discuss the seniority rankings of employees who held dual roles as bus drivers and monitors. During the meeting the parties discussed the manner in which those employees should be ranked. On June 19, Kellerman sent an email (CP Exh. 10) to Bryant indicating the following:

Thanks for meeting with John Kiraly and me on June 14 to try to come up with a mutual way to handle the seniority rankings for the dual-role assistants/drivers who have to choose whether [they] want to be a driver or a monitor for First Student.

Attached is a preliminary draft of the seniority lists for drivers and monitors with the dual-role folks listed on both. Please review these lists and let me know by tomorrow (Wednesday, June 20) if there are any changes or further discussions necessary. Thereafter, we'll need to get this information out to the dual-role applicants so they can make a choice on their preferences of being a driver or a monitor.

Thanks for your input

After reviewing the list with Berry and Rowe, Bryant faxed it back to Kellerman on June 19. (CP Exh. 11.) The mutually agreed-upon list was used by the Respondent as the seniority list for the 2012-2013 school year.

The Completion of the Respondent's Hiring Process

After the Respondent received completed applications from School District unit employees, it began conducting background checks and interviews. Apparently not all employees were interviewed, however, as Stidhum-Stewart was hired without ever having an interview.

The Respondent began to schedule training for applicants in June 2012. Employees were issued the Respondent's national employee handbook when they began their training. The acknowledgment form employees were required to sign indicates that most employees received their handbooks in mid-June 2012 (R. Exh. 11).

The Respondent issued letters offering employment (offer letters) to two School District unit employees on June 27, 2012, the third on July 11, 2012, and the remainder on August 1, 2012 (R. Exh. 6). The Respondent sent offer letters to 42 of the approximately 55 unit employees that were employed by the School District. The offer letters indicate the specific rate of pay offered to individual employees. The offer letters issued on August 1 indicate that an employee's "official hire date" was August 6 but that date was contingent upon the completion of the hiring requirements. The Respondent did not consider employees to be actually hired until they signed the offer letter accepting the terms set forth in the letter.

5 The Respondent began operations for the 2012-2013 school year on August 27, 2012. On that date, all of the employees who had been hired by the Respondent in its Saginaw public school unit attended a “kickoff” meeting on that date. The purpose of this meeting was to prepare employees for the beginning of the school year. As of August 27, 2012, 41 of the 51 employees employed by the Respondent had been employed in the School District’s bargaining unit (R. Exh. 12). By August 17, the Respondent had hired 36 of the former School District unit employees and had hired only 2 employees who were not previously employed by the School District. All of the employees hired by August 17 were either bus drivers or monitors⁷, which are the two unit classifications.

10 I find that by August 17, 2012, the Respondent had hired a substantial and representative complement of its employees and was therefore, on request, obligated to bargain with the Union as of that date. *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 52-53 (1987); *Sullivan Industries*, 302 NLRB 144 (1991), *enfd.* in relevant part, 957 F. 2d 890 (D.C. Cir. 15 1992). As I noted at the outset, the Respondent does not deny that it is a successor to the to the School District for the provision of transportation services but disagrees with the General Counsel and Charging Party that it is a “perfectly clear” successor that had an obligation to bargain with the Union prior to setting initial terms and conditions of employment.

20 At the August 27, 2012, kickoff meeting the Respondent provided employees with an attendance policy that was to become effective on September 1, 2012 (GC Exh. 10). After the meeting, Kellerman and Kiraly noticed that the policy contained language that did not apply to the Saginaw location. The language was corrected and the Respondent issued a revised policy to employees on September 4, 2012. (R. Exh. 13.) The August 27 policy, as revised on September 25 4, sets forth a comprehensive attendance policy including the requirements for taking sick leave. It also includes a disciplinary procedure for “chargeable absences.” The record establishes that the new attendance policy contained differences from than the School District’s attendance policy as set forth in the collective-bargaining agreement with the Union. For example, the sick leave provision contained in article XVI and the leave of absence provision contained in article 30 XVIII of the collective bargaining agreement are substantially different than the attendance policies set forth in the Respondent’s policy.

35 The Respondent began to provide school bus transportation services to the Saginaw public schools on or about September 4, 2012 pursuant to its unilaterally established terms and conditions of employment.

The Union Again Requests Bargaining

40 After July 4, 2012, DeVore called Adams several times on the telephone to discuss recognition and bargaining for the Respondent’s Saginaw unit. Adams did not answer the calls and Devore left several voicemail messages requesting that Adams contact her. Adams testified she recalled seeing Devore’s number come up on her telephone caller ID but did not return the calls because the Respondent was still in the hiring process and she had nothing to tell DeVore.

⁷ Under the collective-bargaining agreement between the School District and the Union the position of monitor was referred to as a bus assistant.

At some point in August, Adams went on maternity leave. After not receiving any response from Adams, on August 29, 2012, DeVore wrote a letter to John Kiraly, the Respondent's location manager for the Saginaw unit. (GC Exh. 14.) In her letter, DeVore indicated that she understood that the Respondent had hired a majority of its existing work force in the Saginaw unit from employees who had previously worked for the School District. The letter again requested that the Respondent recognize the Union and commence bargaining.

Since DeVore had been unsuccessful in reaching Adams, she had asked Bryant to assist her in getting a name from the Respondent as to who would be responsible for the negotiations involving the Saginaw unit. Bryant obtained the name of another one of the Respondent's attorneys Kristen Huening, from Kellerman and passed her name on to DeVore.

On August 30, 2012, DeVore, sent another letter requesting recognition and bargaining to Huening. After not receiving a reply from Huening for approximately 2 weeks, DeVore called Huening. Huening advised DeVore that she would not be handling negotiations as she was an EEOC attorney and would forward the bargaining request to another attorney, Raymond Walther. On September 18, 2012, shortly after obtaining Walther's name, DeVore sent Walther an email asking him to give her a call regarding the Saginaw public school unit. Walther replied by email the same day indicating that he was in negotiations in Georgia and that he would call her when he got back to his office later that week. (GC Exh. 16.) On September 21, Walther sent an email to DeVore indicating that he would be DeVore's contact while Adams was on maternity leave but that Adams would be handling negotiations.

On September 21, 2012, the Union filed a charge in 07-CA-089760 alleging that the Respondent violated Section 8(a)(5) and (1) by refusing to recognize and bargain with the Union. The charge further alleges that the Respondent fail to bargain over initial terms and conditions of employment despite the fact that it was a "perfectly clear" successor (GC Exh. 18).⁸

On September 25 DeVore emailed Walther. Her email indicated that she would like to begin "negotiations as soon as possible and preferably before November when Ms. Adams returns from maternity leave. Is there any way we can begin negotiations before that?" On the same date, Walther replied by email indicating that he was "booked into November anyway. So it makes the most sense to start negotiations with Audrey once she's back."

On October 1, DeVore sent Walther an email indicating that the Union would wait until November before beginning negotiations as long as the Respondent maintained the terms and conditions of employment that the unit employees had prior to the Respondent beginning operations. On the same date, Walther replied by email indicating "As you may know, the company has no obligation to assume the terms and conditions of employment from the predecessor's CBA with the Union. I understand that you filed a ULP charge with the NLRB on this issue. The NLRB has requested my response as they conduct their investigation, and I will comply with that request." (GC Exh. 16). Later on October 1, Walther sent DeVore the following email: "I had some time free up in October if you would still like to start negotiations this month. If you're going to withdraw the ULP charge, I can send you a recognition letter and we can get some dates scheduled. (Of course, if you are not willing to withdraw the ULP charge, then we

⁸ This charge was later withdrawn.

will not be able to begin negotiations until the Board concludes its investigation.) If you agree we can schedule a couple days the week of October 15. Let me know how you would like to proceed.”

5 On October 3, Walther sent the following email to DeVore: “I left you another voicemail this morning. Could you please let me know if the Union intends to begin negotiations on October 15, 2012 and drop the pending ULP charge? Thanks.” On October 5, DeVore sent Walther an email indicating that she was disappointed that he was conditioning negotiations on the Union’s withdrawal of the unfair labor practice charge. She further indicated “Of course, the
10 Union wants to bargain. So, if you rescind your demand that the Union withdraw the ULP charge before First Student will bargain, I would be pleased to meet with you during the week of October 15. Walther responded to DeVore’s email on the same date indicating: “Apologies for the confusion, I’m happy to begin negotiations on 10/15 regardless of whether you withdraw the charge. It’s just that I see no point for the charge at this point. The Company has never refused to
15 bargain with you. Which days are you available the week of 10/15.”

Thereafter, the parties agreed to begin negotiations on October 17, 2012. The negotiations that began in October 2012 were ongoing at the time of the hearing but no agreement had been reached by the parties.

Analysis

In *NLRB v. Burns Security Services*, 406 U.S. 272, 294-295 (1972) the Supreme Court stated:

25 Although a successor employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor, there will be instances in which it is perfectly clear that the new employer plans to retain all of the employees in the unit and in which it will be appropriate to have him initially consult with the
30 employees bargaining representative before he fixes terms.

In *Spruce Up Corp.*, 209 NLRB 194 (1974), *enfd.* on other grounds, 529 F. 516 (4th Cir. 1975) the Board set forth its analysis as to how it would apply the “perfectly clear” exception to the normal rule that a successor employer is free to set initial terms upon which it will hire
35 employees.

In *Spruce Up*, on February 6, 1970, when the union learned that the new employer, Fowler, was likely to take over the operation of the Spruce Up barbershops it requested Fowler to recognize and bargain with it. Fowler refused, contending that he had no employees yet as he
40 anticipated on taking over the barber shops on March 3. When asked about his intentions about hiring barbers, Fowler told the union representatives “all the barbers working will work.” He also told the union representatives what he planned to pay the barbers.

On February 27, Fowler distributed to the barbers at all of the shops individual form
45 letters setting forth the rates of commission he intended to pay, which were different from those paid to the barbers by Spruce Up. The Board found that Fowler’s statements to the employees of the predecessor, Spruce Up, did not operate to forfeit his right to set initial terms of employment.

In so finding, the Board held:

5 When an employer who has not yet commenced operations announces new terms
prior to or simultaneously with his invitation to the previous workforce to accept
employment under those terms, we do not think it can be fairly said that the new
employer “plans to retain all the employees in the unit,” as that phrase was
intended by the Supreme Court. The possibility that the old employees may not
10 enter into an employment relationship with the new employer is a real one as
illustrated by the present facts. Many of the former employees here did not desire
to be employed by the new employer under the terms set by him—a fact which will
often be operative, and which any new employer must realistically anticipate.
Since that is so, it is surely not “perfectly clear” to either the employer or to us
that he can “plan to retain all the employees in the unit” under such a set of facts.

15 We concede that the precise meaning and application of the Court’s caveat is not
easy to discern. But any interpretation contrary to that which we are adopting here
would be subject to abuse, and would, we believe, encourage employer action
contrary to the purposes of this Act and lead to results which we feel sure that the
20 Court did not intend to flow from its decision in *Burns*. For an employer desirous
of availing himself of the *Burns* right set initial terms would, under any contrary
interpretation, have to refrain from commenting favorably at all upon employment
prospects of old employees for fear he would therefore forfeit his right to
unilaterally set initial terms, a right to which the Supreme Court attaches great
25 importance in *Burns*. And indeed, the more cautious employer would probably be
well advised not offer employment to at least some of the old work force under
such a decisional precedent. We do not wish—nor do we believe the Court wished—to
discourage continuity in employment relationships for such legalistic and
artificial considerations. We believe the caveat in *Burns*, therefore, should be
30 restricted to circumstances in which the new employer has either actively or, by
tacit inference, misled employees into believing they would all be retained
without change in their wages, hours or conditions of employment, or at least to
circumstances where the new employer, unlike the Respondent here, has failed to
clearly announced its intent to establish a new set of conditions prior to inviting
35 former employees to accept employment.

Applying the principles set forth above, I find that the Respondent was not required to
negotiate initial terms of employment under *Burns* and *Spruce Up*, and that the Respondent did
not violate Section 8(a)(5) and (1) of the Act in this regard as alleged by the General Counsel.

40 In the instant case, the first contact between the Respondent and the Union occurred in
July 2011 at the interview that the School District conducted with the Respondent regarding its
proposal to provide transportation services for the 2011-2012 school year. DeVore attended the
meeting at the invitation pursuant to an invitation extended by Peatross. At this meeting, the
45 credited testimony establishes Kinsley stated that the Respondent would hire the School
District’s transportation employees if they met the Response hiring criteria and that the
Respondent would maintain the current wages. Kinsley also stated that the Respondent intended

to hire a majority of the school district's employees if they met the Respondent's hiring protocol and that the Respondent's policy was to recognize a union if it hired a majority of the current workforce. Kinsley also stated that at other locations, the Respondent had hired 80 to 90 percent of the existing workforce.

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Kinsley statements establish that it was anticipated that the Union would remain the representative of the employees if the Respondent obtained a contract from the School Board. Thus, even though no employees were present at this meeting, I find that since Devore, a representative of the Union, was present, Kinsley statements are a communication with employees through their representative. *Marriott Management Services, Inc.*, 318 NLRB 144 fn. 1 (1995).

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As noted above, the School District's superintendent decided not to subcontract transportation services for the 2011-2012 school year and notified the Respondent of this fact in November 2011.

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After the School District issued another RFP for the 2012-2013 school year, the Respondent submitted a new proposal. In February 2012, negotiations began again between the Respondent and the School District for a contract regarding the provision of transportation services. While these negotiations were ongoing, Peatross arranged for a meeting on March 12, 2012, between representatives of the Respondent and unit employees and approximately 40 unit employees attended the meeting. According to the credited testimony, at this meeting the Respondent, through Meek, notified the employees that they would be receiving an application form at a future meeting if a contract was reached between the Respondent and the School District. Meek indicated that after the completion of the application and a necessary background check, applicants would be subject to a preemployment drug screen, a physical examination and receive training. Meek further stated that after completion of these requirements the Respondent would offer employment to existing employees who met its criteria.

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In response to a question from an employee regarding how many employees would be hired by the Respondent, Meek indicated that in a conversion between a public school transportation system and the Respondent's operation, the Respondent typically hired 80 to 90 percent of the existing work force. Meek further stated that if the employees are represented and the Respondent hired 51 percent of the existing work force as its own, the employees would bring their representation with them and a new contract would be negotiated.

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Meek stated that the Respondent did not know how many hours would be guaranteed to employees but that it would know more when the routes were established. In response to questions regarding under what conditions the employees would work if hired by the Respondent, Meek stated that those issues would be subject to negotiations.

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At the May 16, 2012, Board of Education meeting which Devore, Bryant and approximately 5 unit employees attended, the credited testimony establishes that Kinsley stated that the Respondent would hire School District employees if they submitted applications and met the Respondent's hiring criteria which included a background check, a drug screen, an interview, and dexterity tests. Kinsley also indicated that the Respondent would hire the current School

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District employees at the same rate of pay and that the Respondent would recognize the Union if it hired 51 percent or more of the existing work force.

5 In the discussion that Kinsley had with DeVore, Bryant and four other unit employees after the Board of Education meeting on May 16, 2012 Kinsley stated that it was the Respondent's goal to hire as many of the School District's employees as it could which met its hiring criteria. Kinsley acknowledged to DeVore that it would be more accurate for him to say that the Respondent would recognize the Union if it hired 50 percent plus one of the existing work force. He also repeated that if employees met the Respondent's hiring criteria their wages
10 would be maintained.

15 Based on the statements noted above, it is clear that from July 11, 2011, through May 16 2012, the Respondent expressed a willingness to hire a majority of the School districts employees and that if it did so, it would recognize and bargain with the Union. However, the Respondent also indicated that, if it did recognize the Union, a new contract would be negotiated. The Respondent indicated it did not know how many hours would be worked by employees. The Respondent stated that employees would retain their rate of pay but, when asked about issues such as paid time off vacation pay and sick pay, the Respondent indicated those issues would be subject to negotiations. These statements indicate that the Respondent would not be adopting the
20 School District's collective-bargaining agreement and that new working conditions would be implemented. The Respondent stated that employees would be employed at their existing wage rates but beyond that was not specific with respect to the employment conditions it would apply.

25 On May 17, after the Board of Education voted to approve the contract between the Respondent and the School District, the Respondent clearly and unequivocally announced in writing the terms and conditions of employment that it was inviting employees to apply under. This memo indicated with specificity the Respondent's initial terms and conditions of employment. With respect to rates of pay, the memo indicated that all current school bus drivers and monitors who returned a completed employment application by May 23 2012 would have
30 their current rate of pay retained and that this rate would apply for field trips and athletic trips. It also indicated, however, that a "B" hourly rate would apply for work performed for nonstudent transportation duties (i.e. attending training, employer school meetings, clerical work bus washing etc.)

35 This clear and unequivocal expression of the employment terms offered by the Respondent was distributed to employees at a meeting that the School District mandated that all unit employees attend. Employees were permitted to ask questions about the terms and conditions of employment announced in the memo. At this meeting employment applications were made available for all employees who were interested in working for the Respondent under
40 the conditions it had announced.

45 The Respondent's clear and unequivocal announcement of the conditions upon which it invited employees to apply for jobs with it occurred while the unit employees were still employed by the School District, as it was before the school year ended at the end of June 2012. It also occurred before the contract between the School District and the Respondent had actually been signed and before its effective date of July 1. The May 17 meeting occurred over 3 months before the Respondent would begin to actually provide school transportation services

Thus, the Respondent clearly and unequivocally announced new terms of employment substantially before it commenced operations. As in *Spruce Up*, the Respondent announced these terms simultaneously with offering employees an application to apply for work under those terms. Under these circumstances, I find that the Respondent did not “either actively or, by tacit inference, mislead employees into believing they would all be retained without change in their wages, hours or conditions of employment” under the standard set forth by the Board in *Spruce Up*, at 195. If employees were unclear about what terms and conditions of employment the Respondent was offering before May 17, 2012, there could be no doubt of what those terms were after the Respondent distributed its May 17 2012 memo. Thus, when employees submitted applications that were handed out at that meeting, they knew in detail the initial terms and conditions of employment that were being offered by the Respondent. After reviewing the applications and conducting background checks and interviews the Respondent offered employment to the first two unit employees on June 27 and did not offer employment to the great majority of the former unit employees until August 1, 2012.

I do not find that the fact that Kellerman and Kiraly met with Bryant and two union stewards in June 2012, and reached an accord in the manner in which seniority would be applied for dual role employees is sufficient to deprive the Respondent of its right under *Burns* and *Spruce Up* to unilaterally set its initial terms of employment. As I have indicated, it was anticipated that the Respondent would recognize the Union. This type of cooperation in the interim period before the Respondent actually commenced operations is both practical and laudable. To use it as a basis to deprive the Respondent of its right under *Burns* to unilaterally establish conditions of employment would, in my view, discourage continuity in the employment relationship in an artificial manner, a result which the Board clearly indicated a desire to avoid in *Spruce Up*.

My conclusion that the Respondent had a right to unilaterally establish its initial terms and conditions of employment is in accord with the Board’s decision in *Banknote Corp. of America*, 315 NLRB 1041 (1994). In that case the Board found that the employer was not a “perfectly clear” successor within the meaning of *Burns* and *Spruce Up*. In that case, the respondent began operations at the facility involved on April 19, 1989. On March 23, 1987, the respondent advised the unions involved that it intended to hire its initial workforce from the employees who were currently employed at the facility. At the same time the respondent indicated it was not making any commitment to recognize the unions or be bound by their collective bargaining agreements. On April 11, the respondent met with union representatives and informed them that it would not honor the collective bargaining agreements they had with the predecessor. The respondent further advised the unions that it intended to have a more flexible operation and that it would cross train employees so they would be able to perform various functions. The Respondent told the unions that the health benefits presently in effect would continue for a period of 60 days. No other terms and conditions of employment were discussed.

On April 16, the respondent interviewed job applicants from the predecessor employees. Three employees testified regarding those interviews at the trial. At these interviews the respondent mentioned flexibility and that employees may be asked to do different things but no more specific information was revealed about benefits except that one employee was told that

her salary and benefits would remain the same. On April 19 the Respondent began operations with 50 employees, all of whom had worked for the predecessor.

5 The Board found that simultaneous with its stated intention to retain the predecessor's employees, the respondent conveyed the message that it would not be adopting the predecessor's terms and conditions of employment and thus put the employees on notice that it would be making changes in the employment terms of the predecessor. The Board also noted that specific anticipated changes were communicated to the unions and to three of the prospective employees at the interviews. Under these circumstances, the Board concluded that the respondent was not a
10 "perfectly clear" successor under *Burns* and that its bargaining obligation did not attach until it hired the employees on April 19. *Banknote Corp. of America*, at 1043.

15 In *Specialty Envelope Co.*, 321 NLRB 828, 831-832 (1996) the Board found that Specialty was not a "perfectly clear" successor under *Burns* and *Spruce Up*. In that case, before extending job offers to the predecessor's employees, Specialty distributed application packets in which it announced the terms and conditions of employment that would be in effect when it began operations. Specialty thereby informed applicants that if they applied and were hired there would be different terms and conditions of employment. In the instant case, as noted above, employees were similarly given new terms t and conditions of employment in writing when they
20 were given applications.

I also find the Board's decisions in *Bekins Moving & Storage Co., LLC*, 330 NLRB 761 (2000); *Planned Building Services Inc.*, 318 NLRB 1049 (1995); and *Marriott Management Services, Inc.*, 318 NLRB 144 (1995) to be supportive of my decision in this case. In each of
25 these cases, as here, the successor employer made clear to the employees of the predecessor that they were being hired under different conditions of employment. Thus, in each of these cases the Board found that the successor was entitled to unilaterally establish initial terms and conditions of employment.

30 I find the cases relied on by the General Counsel and the Charging Party in support of their claim that the Respondent is a "perfectly clear" successor to be distinguishable. In *Elf Atochem North America, Inc.*, 339 NLRB 796 (2003) prior to the respondent commencing operations in June 1998, on January 27, 1998, it informed the employees that it would provide employment to all of the existing work force of the predecessor dedicated to performing work for
35 AtoHaas. The Respondent also indicated that it would recognize employee seniority and would provide employees with an equivalent salary and a comparable health, welfare and benefits package, including a pension plan, a savings plan and vacation benefits. In addition, on March 17, 1998, the respondent informed the union in a letter that it would keep the predecessor's collective bargaining agreement in effect until the parties negotiated a replacement contract.
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In the instant case, the Respondent clearly and unequivocally indicated to employees in writing its initial terms and conditions of employment before they applied for positions with the Respondent. In addition, the Respondent never indicated that the terms and conditions of the School District contract would be applied until a new agreement was reached. Rather, the
45 Respondent made it clear that it would not apply the terms of that contract.

In *DuPont Dow Elastomers LLC*, 332 NLRB 1071 (2000) the Board found that DDE was a “perfectly clear” successor. In that case, on November 15, 1995, DDE announced to the unions representing unit employees at the predecessor DuPont’s Louisville and Chambers Works facilities that it intended to offer employment to all incumbent employees at both plants under conditions that would be announced on November 30. On November 30, DDE notified the unions that although it declined to honor their contracts with the predecessor, it would maintain the employees’ wages and benefits under those contracts, only adding a bonus program called success sharing. In mid-December 1995, DDE held a series of meetings with incumbent employees explaining in detail the terms of its offers. There was no indication of changes other than the addition of the success sharing plan. On January 2, 1996, DDE tendered unconditional offers of hire under those terms. Under these conditions, the Board found that by November 30 the DDE had indicated that it intended to retain its predecessor’s employees at both facilities under the same terms and conditions of employment, except for the success sharing plan, thus leading employees to believe that they would be employed on substantially the same basis as before. In the instant case, as noted above, the Respondent clearly indicated in writing what its initial terms would be before employees applied to work for it. This factor also distinguishes the instant case from *Hilton’s Environmental, Inc.*, 320 NLRB 437 (1995) and *Canteen Co.*, 317 NLRB 1052 (1995), enfd. 103 F.2d 1355 (7th Cir. 1997).

In *Fremont Ford*, 289 NLRB 1290, 1296-1297 (1988) the Board found that the Respondent failed to clearly announce a new set of conditions prior to inviting former employees to accept employment. In so finding the Board noted that the respondent “embarked on a misinformation campaign” and instructed supervisors to give false and misleading information to the predecessor’s employees who inquired about the working conditions that the respondent intended to impose. It was not until after the hiring process began that the Respondent first informed the predecessor’s employees that there would be significantly different employment conditions. In addition, the respondent engaged in other unfair labor practices that demonstrated an unlawful plan to defeat the union’s status as the employees bargaining representative. The Board emphasized in its finding that any uncertainty as to what the respondent would have done, absent its unlawful purpose, must be resolved against it since it could not be permitted to benefit from its unlawful conduct. In the instant case, the employees were clearly and unequivocally informed of the terms and conditions that the Respondent was offering before they submitted applications and the hiring process began. In addition, there is no evidence that the Respondent engaged in any unlawful conduct during the period of time it was hiring its workforce that was designed to defeat the Union’s status as the bargaining representative.

Finally, the instant case is also distinguishable from *Road & Rail Services Inc.* 348 NLRB 1160 (2006). There, the issue was whether the respondent violated Section 8(a)(2), (3), and (1) of the Act by recognizing the union and entering into a collective bargaining agreement with it prior to the hiring of the respondent’s workforce and the commencement of its operations. In that case, the respondent did not unilaterally set initial terms, but rather negotiated an agreement with the union which was in effect at the time it commenced operations and employees reported to work. Thus, unlike the instant case, *Road & Rail Services* did not involve the issue of whether the employees continued employment was contingent on their acceptance of a successor’s unilateral implementation of the initial conditions of employment

On the basis of the foregoing, I find that the Respondent was not a “perfectly clear” successor within the meaning of *Burns* and *Spruce Up* and thus was privileged to unilaterally establish its initial terms and conditions of employment on May 17, 2012. Thus, I find that the Respondent did not violate Section 8(a)(5) and (1) of the Act by failing to bargain with the Union prior to the implementation of those terms of conditions of employment, nor did it engage in unlawful direct dealing. Accordingly, I shall dismiss those allegations in the complaint.

Whether the Respondent Violated Section 8(a)(5) and (1) by Unilaterally Implementing an Attendance Policy on August 27, 2012

Paragraph 14 of the complaint alleges that on or about August 27, 2012, the Respondent unilaterally implemented a new employee attendance policy in violation of Section 8(a)(5) and (1).

As set forth above, on August 27, 2012, the Respondent issued a comprehensive attendance policy to employees which included a disciplinary procedure for “chargeable” absences. On September 4, the Respondent issued a revised policy to employees regarding attendance. These policies were implemented without giving notice to or bargaining with the Union and contained substantial and material differences from the attendance policies set forth in the expired collective-bargaining agreement between the Union and the School District.

The Board has long held that attendance policies are mandatory subjects of bargaining. *Production Plated Plastics Inc.*, 254 NLRB 560 (1981); *Harris-Teeter Super Markets, Inc.*, 293 NLRB 743 (1989).

As I have noted above, on May 16, 2012, the School Board voted to approve the contract between the School District and the Respondent. On May 17, 2012, Respondent informed the unit employees of its initial terms and conditions of employment and invited the unit employees to apply for positions with it. On May 18 2012, and May 21, 2012, the Union submitted written demands for recognition and bargaining to the Respondent. DeVore diligently continued to assert the Union’s request for recognition and bargaining in her June telephone conversations with Adams. After July 1 DeVore called Adams several times to discuss the Union’s outstanding request for recognition and bargaining but Adams did not return her phone calls. On August 27 and August 30 the Union again submitted written demands for recognition and bargaining to the Respondent.

By the time the Union made its initial demand for bargaining on May 18, it was apparent that there was a substantial likelihood that the Respondent would hire the majority of its employees from the School District’s work force. The Respondent’s hiring efforts after May 17 were focused on the hiring of these former employees.

Under these circumstances, I find that the Union made a viable demand for recognition and bargaining on May 18 which was continuing in nature. *Fall River Dyeing Corp. v. NLRB*, supra at 54; *Fremont Ford*, supra at 1295. By August 17, 2012, the Respondent had hired a substantial and representative complement of its work force and the overwhelming majority of those employees had been employed by the School District. Accordingly, the Respondent had an obligation to recognize and bargain with the Union as of August 17, 2012. By unilaterally

implementing an attendance policy on August 27, 2012 and September 4, 2012, without giving notice to or bargaining with the Union, the Respondent violated Section 8(a)(5) and (1) of the Act. *Production Plated Plastics, Inc.* supra.

5 Whether the Respondent Delayed Bargaining in Violation of Section 8(a)(5) and (1)

10 As set forth above, the Union, through DeVore, began to demand recognition and bargaining from the Respondent on May 18 and that demand was continuing in nature. When DeVore spoke to the Respondent's attorney Adams by telephone in early June and requested that the Respondent recognize the Union and begin bargaining, Adams replied that it was premature as the Respondent had only begun hiring employees and that the Respondent's contract with the School District was not effective until July 1. Adams and DeVore agreed to wait until after July 4 to again discuss the Union's request for recognition and bargaining. After July 4 DeVore made several phone calls to Adams but Adams never returned the calls. During this period the
15 Respondent continued to hire employees and, by August 17, 2013, had hired a substantial and representative complement of its workforce, the majority of which were former unit employees of the School District. Finally, on August 29, after not receiving any response from Adams, DeVore wrote another letter requesting bargaining in recognition to the Respondent's Saginaw location manager, Kiraly. On August 30 DeVore sent another such letter to Huening, another one
20 of the Respondent's attorneys.

25 Kiraly never responded to DeVore. DeVore called Huening after not receiving a response to her letter for approximately 2 weeks, to discuss the Union's request for recognition and bargaining. Huening responded by telling DeVore that negotiations were not her responsibility as she was an EEOC attorney. Huening gave DeVore the name of yet another attorney for the Respondent, Walther. After getting Walther's name, DeVore immediately sent him an email on September 18 asking him to contact her regarding the Saginaw unit. Walther replied on the same date indicating that he was in negotiations and telling DeVore that he would contact her the following week.
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35 On September 21 Walther sent an email to DeVore indicating he was the Union's contact person while Adams was on maternity leave but that Adams would be handling negotiations. On September 25 DeVore replied to Walter indicating she would like to start negotiations as soon as possible. On the same date Walther replied saying that he was booked into November and it would make the most sense to start negotiations when Adams returned.

40 On October 1, DeVore sent an email to Walter indicating that the Union would wait until November if the Respondent maintained the terms and conditions of employment that were contained in the collective-bargaining agreement between the Union and the School District. On October 1, Walther replied indicating that the Respondent had no obligation to assume the School District's collective-bargaining agreement with the Union. He also indicated that he understood that an unfair labor practice charge had been filed. On October 1, Walther sent an email to DeVore indicating that he could meet to start negotiations in October if the Union was willing to withdraw the unfair labor practice charge. He further indicated if the Union was not
45 going to withdraw the charge, then the Respondent would not be able to begin negotiations until the Board concluded its investigation.

On October 3, Walther sent DeVore an email asking if the Union intended to begin negotiations on October 15 and drop the pending unfair labor practice charge. On October 5, DeVore replied by an email indicating that if the Respondent would rescind its demand to withdraw the unfair labor practice charge before the Respondent would bargain, the Union would meet with the Respondent during the week of October 15. Finally, on October 5, Walther sent DeVore an email indicating that he would begin negotiations on October 15 regardless of whether the union withdrew the charge. By agreement the parties began negotiations on October 17.

As the foregoing demonstrates, the Union earnestly pursued its right to bargain with the Respondent as a successor to the School District since May 18, the day after the Board of Education approved the contract between the School District and the Respondent. The Respondent attained a substantial and representative complement of its workforce on August 17, a majority of which were unit employees under the collective-bargaining agreement between the School District and the Union. It was on that date that the Respondent was obligated to recognize and bargain with the Union. Rather than responding on May 17, the Respondent treated the outstanding request to bargain in a cavalier fashion. Adams never responded to DeVore's repeated calls after July 1. Kiraly never responded to DeVore's request. Huening, after initially not responding for 2 weeks, essentially told DeVore that negotiations were not her job and passed on Walther's name to DeVore. Walther initially wanted to have the Union wait for Adams return from her maternity leave in November. When DeVore requested that negotiations start sooner, Walther then sought to have the Union withdraw its pending unfair labor practice charge before finally agreeing to bargain the week of October 15. Thus, negotiations did not start until 2 months after August 17, the date the Respondent was clearly obligated to commence negotiations.

In my view none of the reasons advanced by the Respondent for the delay are sufficient to excuse its failure to bargain during this period. The Respondent is a large corporation with many resources, rather than devoting these resources to timely responding to the Union's request for bargaining, its representatives either did not respond to the request or gave insufficient reasons for the failure to meet and bargain. While it was treating the Union's demand for recognition and bargaining in a dilatory fashion, the Respondent implemented an unlawful unilateral change in an important mandatory subject of bargaining, rules regarding absences and the disciplinary process attending those rules.

In *Fruehauf Trailer Services, Inc.*, 335 NLRB 393 (2001) the Board found that a delay in bargaining for almost 3 months without good reason constituted an unlawful delay in negotiations. In the context of the instant case, I find the 2 month delay that occurred herein is sufficient to find that the Respondent unreasonably delayed negotiations in violation of Section 8(a)(5) and (1).

Whether the Respondent Insisted as a Condition of Meeting that the Union Withdraw an Unfair Labor Practice Charge in Violation of Section 8(a)(5) and (1)

As noted above, on October 1, Walther sent DeVore an email indicating that he could schedule bargaining the week of October 15 if the Union would withdraw the then pending unfair labor practice charge in 07-CA-089760. He further indicated that if the Union was not

5 willing to withdraw the charge, the Respondent would not be able to begin negotiations until the Board finished its investigation of the charge. On October 5, DeVore sent Walther an email indicating that she was disappointed that he was conditioning negotiations on the Union's withdrawal of the unfair labor practice charge. She reiterated the Union's desire to bargain and further stated that if the Respondent rescinded its demand that the Union withdraw the charge before it would bargain with the Union, the Union would be willing to meet during the week of October 15. After receiving this email, on October 5 Walther indicated that he would begin negotiations on October 15 regardless of whether the Union withdrew the charge. Negotiations began on the agreed-upon date of October 17

10 The Respondent's October 1 proposal that the Union withdraw its unfair labor practice charge is a nonmandatory subject of bargaining. *Carlson Porsche Audi, Inc.* 266 NLRB 141, 149-150 (1983); *Patrick & Company*, 248 NLRB 390, 393 fn. 5 (1980).

15 In the instant case, while Walther proposed on October 1 that the unfair labor practice charge be withdrawn as a condition to begin negotiations, on October 5 Walther dropped that proposal and indicated that the Respondent would be willing to begin negotiations on October 15, regardless of whether the union withdraw the charge. It is permissible to propose a nonmandatory subject of bargaining such as the withdrawal of an unfair labor practice charge. What is impermissible is to insist to impasse that a charge be withdrawn before an agreement is reached, or as in this case, negotiations commence.

20 It is clear that in the instant case the Respondent did not insist to impasse that the Union withdraw the information practice charges condition to commencing negotiations. As noted above, I find that the interjection of this issue caused some additional brief delay before negotiations actually commenced. However, since the Respondent raised the issue only briefly did not insist to impasse on it I find it does not rise to the level of a separate unfair labor practice. *Carlson Porsche Audi*, supra at 149-150. Accordingly, I shall dismiss this allegation in the complaint

30 CONCLUSIONS OF LAW

35 1. At least from August 27, 2010, to June 5, 2013, The United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO and Local 8410, The United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO (the Union) was the exclusive bargaining representative in the following appropriate unit (the Unit):

40 All full-time and regular part-time drivers and monitors employed by First Student Inc., A Division of First Group America at its Saginaw, Michigan location, but excluding substitutes and temporary drivers and monitors, dispatchers, confidential employees and supervisors as defined in the Act.

45 2. Since June 5, 2013, The United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO and Local 9036, The United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial

and Service Workers International Union (USW), AFL-CIO, has been the exclusive bargaining representative of the employees in the Unit.

3. By unilaterally implementing attendance policies on August 27, 2012, and September 4, 2012, the Respondent violated Section 8(a)(5) and (1) of the Act.

4. By delaying bargaining from August 17, 2012, to October 17, 2012, the Respondent has violated Section 8(a)(5) and (1) of the Act.

5. The above unfair labor practices affect commerce within the meaning of Section 2 (2), (6) and (7) of the Act.

6. The Respondent has not otherwise violated the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally implementing attendance policies on August 27, 2012, and September 4, 2012, I shall order the Respondent to rescind those rules and bargain with the Union about any future implementation of an attendance policy. I shall also order that the Respondent restore the status quo which existed at the time of its unlawful unilateral action by rescinding any disciplinary actions resulting from the implementation of its attendance policies. *Production Plated Plastics, Inc.* supra. Accordingly, if any employees have been discharged pursuant to these attendance policies, I shall order the Respondent to offer them full and immediate reinstatement to their former jobs, or if those jobs no longer exist to substantially equivalent positions without prejudice to their seniority or any other rights and privileges previously enjoyed. For any employees who have been discharged or disciplined pursuant to these rules I shall order the Respondent to make them whole for any loss of earnings and other benefits suffered as a result of the application of the unlawful rules to them. Backpay shall be computed in the manner set forth in *F.W. Woolworth Co.*, 90 NLRB 289 (1950); with interest at the rate prescribed in *New Horizons for the Retarded, Inc.* 283 NLRB 1173 (1987); compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

Since the Respondent violated Section 8(a)(5) and (1) of the Act by delaying bargaining, I shall order the Respondent to meet with the Union, upon request, promptly and at reasonable times and intervals.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, First Student, Inc. A Division of First Group America, Saginaw, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Implementing attendance policies without bargaining with the Union.

(b) Refusing to meet promptly with the Union, on request, for purposes of collective-bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the August 27, 2012 and September 4, 2012 attendance policies and, upon request, bargain with the Union regarding the implementation of any future attendance policy. The appropriate unit is:

All full-time and regular part-time drivers and monitors employed by First Student Inc., A Division of First Group America at its Saginaw, Michigan location, but excluding substitutes and temporary drivers and monitors, dispatchers, confidential employees and supervisors as defined in the Act

(b) Within 14 days of the date of the Board's Order, expunge from the personnel files of employees all references to disciplinary actions which resulted from the failure to comply with the Respondent's unilaterally implemented attendance policies and within 3 days thereafter notify the employees in writing that this has been done and that the discipline will not be used against them in any way.

(c) Within 14 days from the date of the Board's order, offer any employees discharged pursuant to the unilaterally imposed attendance policies, immediate and full reinstatement to their former jobs or, if those jobs no longer exists, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make whole employees for any loss of earnings and other benefits suffered by them as a result of discipline imposed against them pursuant to the unilaterally implemented attendance policies, in the manner set forth in the remedy section of the decision.

(e) On request, meet and bargain with the Union and do so promptly and regularly at reasonable times and intervals.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records

and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Saginaw, Michigan copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 17, 2012.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., December 13, 2013.

Mark Carissimi
Administrative Law Judge

¹⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX**NOTICE TO EMPLOYEES**

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT implement attendance policies without bargaining with the United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO and Local 9036, The United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO (the Union)

WE WILL NOT refuse to meet promptly with the Union, on request, for purposes of collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the August 27, 2012 and September 4, 2012 attendance policies that we unilaterally implemented and WE WILL, upon request, bargain with the Union regarding the implementation of any future attendance policy. The appropriate unit is:

All full-time and regular part-time drivers and monitors employed by First Student Inc., A Division of First Group America at its Saginaw, Michigan location, but excluding substitutes and temporary drivers and monitors, dispatchers, confidential employees and supervisors as defined in the Act.

WE WILL, within 14 days of the Board's Order, expunge from the personnel files of employees all references to disciplinary actions which resulted from the failure to comply with the Respondent's unilaterally implemented attendance policies and within 3 days thereafter notify the employees in writing that this has been done and that the discipline will not be used against them in any way.

WE WILL within 14 days from the date of the Board's Order, offer any employees discharged pursuant to the unilaterally imposed attendance policies, immediate and full reinstatement to their former jobs or, if those jobs no longer exists, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole employees for any loss of earnings and other benefits suffered by them as a result of discipline imposed against them pursuant to the unilaterally implemented attendance policies, with interest.

WE WILL, on request, meet and bargain with the Union and do so promptly and regularly at reasonable times and intervals.

FIRST STUDENT INC., A DIVISION FIRST
GROUP AMERICA

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

477 Michigan Avenue, Room 300, Detroit, MI 48226-2569

(313) 226-3200, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S

COMPLIANCE OFFICER, (313) 226-3244.

TAB 8

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**FIRST STUDENT, INC.,
A DIVISION OF FIRST GROUP
AMERICA,**

Respondent,

and

**UNITED STEEL, PAPER & FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL
UNION (USW), AFL-CIO-CLC,
AND ITS LOCAL UNION 9036,**

Charging Party

Case 07-CA-092212

**EXCEPTIONS TO THE DECISION AND RECOMMENDED ORDER OF THE
ADMINISTRATIVE LAW JUDGE ON BEHALF OF CHARGING PARTY
UNITED STEEL, PAPER & FORESTRY, RUBBER, MANUFACTURING,
ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION (USW), AFL-CIO-CLC, AND ITS LOCAL UNION 9036**

Now comes Charging Party United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC and its Local Union 9036 (“union”), and does hereby respectfully submit these Exceptions to the Decision and Recommended Order of the Administrative Law Judge (“ALJ”) in accordance with the Board’s Rules and Regulations Section 102.46:

1. The union excepts to the ALJ’s omission of material and undisputed facts regarding (i) the similarity of First Student’s and the school district’s hiring standards (8:41-43; 10:35-39; 13:35-38); (ii) First Student’s adoption of the school district’s school bus routing system (ALJ 11:1-6, 26-28); (iii) First Student’s announcement that terms and conditions of employment would be

subject to bargaining with USW (ALJ 11:13-15, 20-22, 30); (iv) the school district's priorities informing the contracting process and First Student's desire to meet those priorities . (ALJ 8:16-20:19).¹ *See* Union's Brief in Support of Exceptions, Statement of the Case Sec. II; Argument Sec. I; Sec. II(A)(1), (3), (4); Sec. II(B).

2. The union excepts to the ALJ's failure to find that First Student was not a perfectly clear successor. (ALJ 21:37-39). *See* Union's Brief in Support of Exceptions, Argument Sec. II.

a. The union excepts to the ALJ's reliance on the following findings to support his legal conclusion regarding perfectly clear successorship: (i) that First Student announced unilaterally implemented changes to employees' working conditions while the employees were still employed by its predecessor (ALJ 23:43-44); (ii) that First Student announced unilaterally implemented changes to employees' working conditions before the contract between First Student and its predecessor had "actually been signed," but after it was negotiated and approved (ALJ 23:45-46); (iii) that First Student announced unilaterally implemented changes to employees' working conditions over three months before First Student "actually provide[d] school transportation services" (ALJ 23:46-47); and (iv) that First Student announced unilaterally implemented changes to employees' working conditions before the employees submitted applications (ALJ 24:10-13).

¹ The brief cites portions of the ALJ's opinion as (ALJ [page]:[line]).

- b. The union excepts to the ALJ's failure to find that the date a successor actually assumes control of its predecessor's enterprise is immaterial to the perfectly clear successor doctrine. (ALJ 20:21-27:6).
- c. The union excepts to the ALJ's conclusion that First Student's statements between July 2011 and May 16, 2012, "indicate[d] that . . . new working conditions would be implemented." (ALJ 23:19-21). The union excepts to the ALJ's failure to consider related testimony that the ALJ credited, which provides critical context for this issue. (ALJ 23:12-22; 22:37-38).
- d. The union excepts to the ALJ's reliance on *Banknote Corp.*, because it is distinguishable based on the fact that the successor in *Banknote* expressly disclaimed any intent to recognize the union or preserve working conditions. (ALJ 24:28-25:11).
- e. The union excepts to the ALJ's reliance on *Specialty Envelope*, because it is distinguishable based on the fact that the successor in *Specialty* did not demonstrate an intent to hire its predecessor's employees prior to announcing an intent to change their working conditions. (ALJ 25:13-20).
- f. The union excepts to the ALJ's reliance on *Bekins Moving & Storage*, *Planned Building Services*, and *Marriott Management Services* because his analysis is conclusory and those cases are distinguishable. (ALJ 25:22-28)
- g. The union excepts to the ALJ's legal conclusion that First Student "was privileged to unilaterally establish its initial terms and conditions of employment on May 17, 2012." (ALJ 27:1-3).

- h. The union excepts to the ALJ's failure to find that on May 17, 2012, First Student unlawfully announced new terms and conditions of employment to the bargaining unit without notice to or bargaining with the union, and that this conduct constitutes direct dealing in violation of Section 8(a)(5) of the Act. (ALJ 27:3-6).
 - i. The union excepts to the ALJ's finding that First Student was not "obligated to recognize and bargain with" the union until August 17, 2012. (ALJ 27:2-3; 29:12-15).
 - j. The union excepts to the ALJ's legal conclusion that First Student violated Section 8(a)(1) and (5) of the Act by delaying bargaining beginning on August 17, 2012, and his failure to find that First Student unlawfully delayed bargaining beginning on May 18, 2012. (ALJ 31:7-8).
 - k. The union excepts to the ALJ's legal conclusion that First Student's May 17 announcement of unilateral changes to employees' working conditions did not constitute unlawful direct dealing. (ALJ 27:3-6).
 - l. The union excepts to the ALJ's dismissal of complaint paragraphs 13, 16, 21, and paragraph 15 to the extent it references paragraph 13, and related legal conclusions. (ALJ 21:37-39; 27:6; 31:13).
3. The union excepts to the ALJ's legal conclusion that First Student's negotiating with the local union regarding employee seniority in June, and reaching an agreement with the local union on that term, were insufficient "to deprive First Student of its right under *Burns* and *Spruce Up* to unilaterally set its initial terms

of employment.” (ALJ 17:40-47; 24:17-26). *See* Union’s Brief in Support of Exceptions, Argument Sec. II(A)(5); Sec. II(B).

4. The union excepts to the ALJ’s legal conclusion that because First Student conditioned bargaining on ULP withdrawal “only briefly” and “did not insist to impasse on it,” the condition of bargaining was lawful. (ALJ 19:24-25; 30:26-27). *See* Union’s Brief in Support of Exceptions, Argument Section III.
 - a. The union excepts to the ALJ’s legal conclusion that, because First Student “did not insist to impasse” that the union withdraw the ULP charge, First Student’s conditioning of bargaining did “not rise to the level of a separate unfair labor practice.” (ALJ 30:27).
 - b. The union excepts to the ALJ’s reliance on *Carlson Porsche Audi*, because that case is distinguishable based on the fact that the parties were already bargaining and withdrawal of a ULP charge was not held out as a condition upon which bargaining depended. (ALJ 30:11-13, 26-28).
 - c. The union excepts to the ALJ’s reliance on *Patrick & Company*, because it is distinguishable; in that case, the parties bargained to impasse concerning a proposal for withdrawal of a ULP, and the Board held it did violate the Act.
 - d. The union excepts to the ALJ’s dismissal of complaint paragraphs 18 and 21, and related legal conclusions. (ALJ 30:23-29; 31:13).
5. The union excepts to the ALJ’s Recommended Order and Remedy, and specifically excepts to his failure to include an order that First Student rescind all changes it announced in unit employees’ terms and conditions of employment

beginning on May 17, advise employees in writing of such rescission, return to the status quo ante in such matters if so requested by the union, and make whole those employees who suffered financial loss as a result of the unlawful changes, with interest computed in accord with Board policy. (ALJ 32:1-33:22).

Respectfully submitted,

February 10, 2014

/s/ Emma R. Rebhorn
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Counsel for the Charging Party Union

CERTIFICATE OF SERVICE

This is to certify that a true copy of the EXCEPTIONS TO THE DECISION AND RECOMMENDED ORDER OF THE ADMINISTRATIVE LAW JUDGE ON BEHALF OF CHARGING PARTY UNITED STEEL, PAPER & FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (USW), AFL-CIO•CLC, AND ITS LOCAL UNION 9036 was served via electronic mail this 10th day of February, 2014 upon:

Jennifer Y. Brazeal
National Labor Relations Board, Region 7
477 Michigan Avenue, Room 300
Detroit, MI 48226

David A. Kadela
Littler Mendelson, P.C.
21 East State Street, 16th Floor
Columbus, OH 43215-4228

/s/ Emma R. Rebhorn
Emma R. Rebhorn

Dated: February 10, 2014

TAB 9

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**FIRST STUDENT, INC., A DIVISION
OF FIRST GROUP AMERICA,**

Respondent,

and

**LOCAL 9036, UNITED STEEL, PAPER
AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL
UNION (USW), AFL-CIO,**

Charging Party,

and

SAGINAW SCHOOL DISTRICT,

Party in Interest.

Case 07-CA-092212

**RESPONDENT FIRST STUDENT, INC.'S EXCEPTIONS TO
THE ADMINISTRATIVE LAW JUDGE'S DECISION**

David A. Kadela
Erik Hult
Littler Mendelson, PC
Fifth Third Center
21 E. State Street, Suite 1600
Columbus, Ohio 43215
Attorneys for Respondent First Student, Inc.

Dated: February 10, 2014

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**FIRST STUDENT, INC., A DIVISION
OF FIRST GROUP AMERICA,**

Respondent,

and

Case 07-CA-092212

**LOCAL 9036, UNITED STEEL, PAPER
AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL
UNION (USW), AFL-CIO,**

Charging Party,

and

SAGINAW SCHOOL DISTRICT,

Party in Interest.

**RESPONDENT FIRST STUDENT, INC.'S EXCEPTIONS TO
THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Respondent First Student, Inc. hereby submits the following exceptions to the decision and recommended order issued in this case by Administrative Law Judge Mark Carissimi on December 13, 2013.¹

1. The Company excepts to the ALJ's finding that Paragraph 8 of the Complaint, as amended at the hearing, alleges that since 1981 through June 2013, the District recognized the

¹ As used in this brief, "District" means the Saginaw, Michigan School District; "First Student" or the "Company" means Respondent First Student, Inc.; "USW" means the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; "Local 9036" means Charging Party USW Local 9036; "Local 8410" means USW Local 8410; "General Counsel" means Counsel for the Acting General Counsel; "ALJ" means Administrative Law Judge Mark Carissimi; and "ALJD" means the ALJ's decision and recommended order.

USW and Local 8410 as the collective-bargaining representative of the bargaining unit described in the Complaint (the “unit”). (ALJD pp. 2, 4) As grounds for this exception, the Company submits that the transcript shows that, as amended at the hearing, Paragraph 8(a) alleges that the District recognized Local 8410 (not the USW and Local 8410) from about February 19, 1981, through June 1, 2012. (Tr. 80-81, 83)²

2. The Company excepts to the ALJ’s order granting the motion made by the General Counsel in his post-hearing brief to amend Paragraph 9 of the Complaint and to the findings on which the ALJ based the order. (ALJD pp. 3-4). As grounds for this exception, the Company submits that the ALJ erred in finding that the amendments were appropriate under the three-factor test set out in *Stagehands Referral Service*, 347 NLRB 1167, 1171 (2006) and *Cab Associates*, 340 NLRB 1391, 1397 (2003). The ALJ’s finding was erroneous because: (a) First Student was not on notice the General Counsel had any plans to file, and was surprised by his filing of, the motion; (b) the General Counsel’s contention that his failure to file the motion at the hearing was an oversight did not, in the circumstances presented, excuse his failure to file the motion at that time; and (c) the issue to which the amendment went, the identity of the unit employees (the “employees”) 9(a) representative, was not fully litigated at the hearing, as the General Counsel failed to adduce competent evidence from which a finding could be made on which union was the employees’ 9(a) representative. (See First Student’s Memorandum in Opposition to the General Counsel’s Post-Hearing Motion to Amend Complaint)

3. The Company excepts to the ALJ’s finding that the USW and Local 8410 were joint representatives of the employees from August 27, 2010, until June 5, 2013. (ALJD pp. 5-6)

² References to the transcript of the hearing are abbreviated, “Tr. ____”; references to the General Counsel’s exhibits are abbreviated, “GCX ____”; references to the Company’s exhibits are abbreviated, “REX ____”; and references to Local 9036’s exhibits are abbreviated, “UEX ____.”

As grounds for this exception, the Company submits that the ALJ erred in finding that the District's collective-bargaining agreement (the "District CBA" or "CBA") (GCX 2) proves that the USW and Local 8410 were joint representatives of the employees. While the District CBA was, as the ALJ found, signed by representatives of the USW and Local 8410, that fact failed to support the ALJ's conclusion that the unions jointly represented the employees. The CBA did not contain any language stating that the unions were joint representatives; on the contrary, it contained language indicating otherwise. In particular, the cover page stated that the CBA was between the District and Local 8410; the first paragraph of the CBA stated that the CBA was between the District and the USW, "on behalf of Local 8410"; and Article XIII (Representation) provided for the establishment of a grievance/negotiating committee made up of employees to handle grievances and negotiate a labor agreement (GCX 2). Clouding the issue further, Paragraph 8(a) of the Complaint, as amended, alleged that the District recognized Local 8410 as the representative of the unit employees, not the USW and Local 8410. (Tr. 80-81, 83) These considerations demonstrate that the District CBA cannot be found to establish who the employees' 9(a) representative was, e.g., whether: (a) the USW and Local 8410 were joint 9(a) representatives; (b) the USW was the employees 9(a) representative and Local 8410 was the USW's agent; or (c) Local 8410 was the employees 9(a) representative and the USW was Local 8410's agent. Only the unit employees, by majority designation or selection, had the power to confer 9(a) status on a representative. *See Mountain Valley Care & Rehabilitation Center*, 346 NLRB 281, 282 (2006); *Nevada Security Innovations, Ltd.*, 341 NLRB 953, 955 (2004); *Goad Co.*, 333 NLRB 677, 677-80 (2001); *Reading Anthracite Co.*, 326 NLRB 1370, 1371 (1998); *National Upholstering Co.*, 311 NLRB 1204, 1208 n.7 (1993). Here, neither the CBA nor any other evidence in the record reflects that a majority of the employees in the unit at any time

selected the USW and Local 8410 to jointly represent them. (See First Student's Memorandum in Opposition to the General Counsel's Post-Hearing Motion to Amend Complaint)

4. The Company excepts to the ALJ's finding that the USW and Local 9036 have been the joint representatives of the employees since June 5, 2013. (ALJD p. 6) As grounds for this exception, the Company submits that the ALJ erred in finding that USW Representative Tonya DeVore's involvement in transitioning the bargaining unit from Local 8410 to Local 9036 proved that the USW and Local 9036 jointly represent the employees. The ALJ erred because no evidence was presented on whether DeVore was acting as a joint representative of the employees or as an agent of Local 8410 and/or Local 9036.

5. The Company excepts to the ALJ's finding that there was substantial continuity in the representation of the employees by the USW and Local 8410 before the transfer of the unit, and the USW and local 9036 after the transfer of the unit. (ALJD p. 7) As grounds for this exception, the Company submits that because the ALJ erred in finding that the USW jointly represented the employees, first with Local 8410 and then with Local 9036, he necessarily erred in finding that there was substantial continuity in the representation of the employees by those unions. The General Counsel failed to prove who the employees' 9(a) representative was at any relevant time. (See Exception Nos. 3-4)

6. The Company excepts to the ALJ's finding that the "Union" to which reference was made in the charge filed by Local 9036 was comprised of the USW and Local 8410 until June 5, 2013, and the USW and Local 9036 after June 5, 2013. (ALJD p. 7) As grounds for this exception, the Company submits that the charge, on its face, establishes that the term "Union," as used in it, means Local 9036. (GCX 1) In addition, because the ALJ erred in finding that the USW jointly represented the employees, first with Local 8410 and then with Local 9036, he

necessarily erred in construing the term “Union” as he did. (See Exception Nos. 3-4)

7. The Company excepts to the ALJ’s finding that there was continuity of representation throughout the 10(b) period based upon the USW’s always having been one of the joint representatives of the employees. (ALJD p. 7) As grounds for this exception, the Company submits that because the ALJ erred in finding that the USW jointly represented the employees, first with Local 8410 and then with Local 9036, he necessarily erred in finding that there was continuity of representation throughout the 10(b) period. (See Exception Nos. 3-4)

8. The Company excepts to the ALJ’s finding that the amendment to Paragraph 9 of the Complaint, alleging that the USW and Local 8410 were both the employees’ 9(a) representative in the relevant time period, was closely related to the allegations of the charge filed by Local 9036. (ALJD p. 8) As grounds for this exception, the Company submits that complaint allegations substituting a different entity as charging party in place of the entity that filed the charge cannot be found to be closely related to the allegations contained in the charge. (GCX 1)

9. The Company excepts to the ALJ’s finding that, because DeVore was present as a representative of the Union when they were made, Company Representative Kinsley’s statements at the interview with the District in July 2011 constituted a communication with employees through their union representative. As grounds for this exception, the Company submits that: (a) Kinsley’s statements were not relevant to the question whether First Student is a perfectly clear successor because they were made over ten months before execution of the transportation services contract between the District and the Company; and (b) Kinsley’s statements otherwise cannot be construed as a communication to the employees through their union representative because they were directed to and intended for the District, not DeVore.

(Tr. 378-86, 402-03, 454-58, 461-65; GCX 17, 20; REX 7)

10. The Company excepts to the ALJ's findings that by August 17, 2012, it had hired a substantial and representative complement of its workforce, and that it was obligated, upon request, to recognize and bargain with the District's employees' union representative as of that date. (ALJD pp. 18, 27, 29)

11. The Company excepts to the ALJ's finding that the provisions of the sick leave article (Article XVI) and the leave of absence article (Article XVIII) of the District CBA are substantially different than the provisions of the attendance policies the Company issued on August 27, 2012, and September 4, 2012. (ALJD p. 18)

12. The Company excepts to the ALJ's findings that it implemented the attendance policies it issued on August 27, 2012, and September 4, 2012, without giving notice to or bargaining with the Union, and that the policies contained substantial and material differences from the attendance policies set forth in the District CBA. (ALJD p. 27)

13. The Company excepts to the ALJ's finding that by unilaterally implementing attendance policies on August 27, 2012, and September 4, 2012, without giving notice to or bargaining with the Union, First Student violated Sections 8(a)(1) and (5) of the Act. (ALJD pp. 27-28)

14. The Company accepts to the ALJ's finding that it treated the Union's requests to bargain in a cavalier fashion. (ALJD p. 29)

15. The Company excepts to the ALJ's findings that the reasons offered by it for its alleged delay in bargaining were insufficient to excuse the delay, that its representatives either did not respond to the Union's requests to bargain or gave insufficient reasons for the failure to meet and bargain, and that it treated the Union's request to bargain in a dilatory fashion. (ALJD

p. 29)

16. The Company excepts to the ALJ's finding that the purported two-month delay in bargaining was sufficient to find that it unreasonably delayed negotiations in violation of Sections 8(a)(1) and (5) of the Act. (ALJD p. 29)

17. The Company excepts to the ALJ's conclusion of law that from at least August 27, 2010, to June 5, 2013, the USW and Local 8410 were the exclusive bargaining representatives of the unit employees. (ALJD p. 30)

18. The Company excepts to the ALJ's conclusion of law that since June 5, 2013, the USW and Local 9036 have been the exclusive bargaining representatives of the unit employees. (ALJD p. 30-31)

19. The Company excepts to the ALJ's conclusion of law that the Company violated Sections 8(a)(1) and (5) of the Act by unilaterally implementing attendance policies on August 27, 2012, and September 4, 2012. (ALJD p. 31)

20. The Company excepts to the ALJ's conclusion of law that the Company violated Sections 8(a)(1) and (5) of the Act by delaying bargaining from August 17, 2012, to October 17, 2012. (ALJD p. 31)

21. The Company excepts to the ALJ's conclusion of law that the alleged unfair labor practices affect commerce with the meaning of Sections 2(2), (6) and (7) of the Act. (ALJD p. 31)

22. The Company excepts to the ALJ's recommended remedy and order, with the exception of the portion of the order dismissing the Complaint insofar as it alleges violations of the Act not specifically found. In that regard, the Company notes that: (a) subsequent to the hearing and prior to issuance of the ALJD, the Company and the Union entered into a collective-

bargaining agreement, rendering moot the ALJ's recommendations that the Company rescind its attendance policy and bargain with the Union over an attendance policy and that it rescind and expunge any disciplinary action taken under the attendance policy since the collective-bargaining agreement went into effect; (b) the ALJ neglected, in ordering the Company to reinstate and make whole any employees discharged under the attendance policy, to exclude employees who would have been terminated under the District's attendance policy; and (c) the record establishes that since October 17, 2012, the Company has satisfied its duty to bargain with the Union, rendering unnecessary and punitive the ALJ's recommendation that the Company be ordered to bargain with the Union, upon request, promptly and at reasonable times and intervals (Tr. 560-66; GCX 16; UEX 8). (ALJD p. 31-33)

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of February 2014, I e-filed the foregoing Exceptions on the NLRB's E-Filing system and served a copy of it by electronic mail upon:

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David A. Kadela

TAB 10

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**FIRST STUDENT INC., A DIVISION OF
FIRST GROUP AMERICA**

Respondent

CASE 07-CA-092212

and

**LOCAL 936, UNITED STEEL, PAPER
AND FORESTRY, RUBBER, MANUFACTURING,
ENERGY, ALLIED INDUSTRIAL
AND SERVICE WORKERS INTERNATIONAL
UNION (USW), AFL-CIO**

Charging Union

**COUNSEL FOR THE GENERAL COUNSEL'S CROSS- EXCEPTIONS TO
THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Pursuant to § 102.46 (a) of the Board's Rules and Regulations, the undersigned submits these cross-exceptions to the following aspects of the December 13, 2013 decision of Administrative Law Judge Mark Carissimi (hereinafter JD):

1. The ALJ's finding that Respondent was obligated to bargain with the Union as of August 17, 2012 (JD 18/10-13; 29/ 15-18)
2. The ALJ's finding that Respondent was not required to negotiate initial terms of employment under *NLRB v. Burns Security Services*, 406 U.S., 272 (1972) and *Spruce Up Corp.*, 209 NLRB 194 (1974), enf'd 529 F.2d 516 (4th Cir. 1975). (JD 21/ 36-39)
3. The ALJ's finding that the from July 11, 2011 through May 16, 2012, Respondent's statements to the Union and employees indicated that the Respondent would not be adopting the Saginaw Public School District's collective bargaining agreement and that new working conditions would be implemented. (JD 23/ 12-14)

4. The ALJ's finding that on May 17, 2012, Respondent clearly and unequivocally announced in writing the terms and conditions of employment that it was inviting employees to apply under. (JD 23/ 24-26)
5. The ALJ's finding that Respondent clearly and unequivocally announced new terms and conditions of employment substantially before it commenced operations. (JD 24/ 2-3)
6. The ALJ's finding that Respondent did not either actively or, by tacit inference, mislead employees into believing that they would all be retained without change in their wages, hours, or conditions of employment under the standard set forth by the Board in *Spruce Up Corporation* at 195. (JD 24/ 5-8)
7. The ALJ's finding that the fact that Frederick Kellerman and John Kiraly met with Clint Bryant and two union stewards in June 2012 and reached an accord in the manner in which would be applied for dual role employees is insufficient to deprive Respondent of its right under *Burns* and *Spruce Up Corp* to unilaterally set its initial terms of employment. (JD 24/17-20).
8. The ALJ's conclusions that the Board's decisions in *Banknote Corp of America*, 315 NLRB 1041 (1994), *Specialty Envelope Co.*, 321 NLRB 828 (1996), *Bekins Moving & Storage LLC*, 330 NLRB 761 (2000), *Planned Building Services, Inc.*, 318 NLRB 1049 (1995), and *Marriot Management Services, Inc.*, 318 NLRB 144 (1995) support his finding that Respondent is not a "perfectly clear" successor to the Saginaw Public School District. (JD 24/ 28-30; 25/ 22-25)
9. The ALJ's conclusions that the Board's decisions in *Elf Atochem North America, Inc.*, 339 NLRB 796 (2003); *Dupont Dow Elastomers LLC*, 332 NLRB 1071 (2000); *Canteen Co.*, 317 NLRB 1052 (1995), *enfd. 103 F.2d 1335* (7th Cir. 1997); *Hilton's Environmental, Inc.*, 320 NLRB 437 (1995); *Fremont Ford*, 289 NLRB 1290 (1988), and *Road & Rail Services*, 348 NLRB 1160 (2006) are materially distinguishable from the instant case and likewise do not support a finding that Respondent is a perfectly clear successor to the Saginaw Public School District. (JD 25/30-39; 26/ 15-18; 26/31-35, 26/37-45)
10. The ALJ's finding that Respondent did not commit any unilateral changes on May 17, 2012 or otherwise engage in direct dealing. (JD 27/1-6)

11. The ALJ's analysis that the Union made a "viable demand for recognition on May 18, 2012 which was continuing in nature," but his refusal to use dates in May 2012 as when Respondent's bargaining obligation to the Union attached. (JD 27/42-45)

12. The ALJ's finding that Respondent's unlawful delay in agreeing to bargain with the Charging Union began on August 17, 2012 instead of beginning on May 18, 2012 (JD 29/ 15-18)

13. The ALJ's dismissal of the allegation that Respondent violated Section 8(a)(5) of the Act by insisting that the Charging Union withdraw an unfair labor practice charge as a condition of bargaining and the ALJ's analytical framework. (JD 30/11-29)

14. The portions of the ALJ's Recommended Order and remedy to the extent that it is inconsistent with the Region's recommended remedy set forth in the Complaint.

The portions of the record and authority relied upon to support these exceptions are contained in the accompanying supporting brief.

CONCLUSION

Counsel for the General Counsel asks the Board to reverse the foregoing findings, rulings, and conclusions made by the ALJ and to hold that Respondent violated Sections 8(a)(1) and (5) for the reasons in the attached supporting brief and as alleged in the Complaint.



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Dated at Detroit, Michigan, this 10th day of March 2014

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**FIRST STUDENT INC., A DIVISION OF
FIRST GROUP AMERICA,**

Respondent

and

CASE

07-CA-092212

**LOCAL 9036, UNITED STEEL, PAPER
AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION (USW)
AFL-CIO,**

Charging Union

**COUNSEL FOR THE GENERAL COUNSEL'S
BRIEF IN SUPPORT OF CROSS EXCEPTIONS TO THE DECISION OF
THE ADMINISTRATIVE LAW JUDGE**

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Counsel for the General Counsel Jennifer Y. Brazeal pursuant to Section 102.46 of the Board's Rules and Regulations, respectfully submits this brief in support of Counsel of the General Counsel's Cross Exceptions to the Decision of the Administrative Law Judge. (JD)

I. STATEMENT OF THE CASE¹

On April 30, 2013, the Acting General Counsel issued a Complaint based on a charge filed by Local 9036, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO (Union) against First Student, Inc., a division of First Group America (Respondent). The Complaint alleges, in part, that, beginning on May 17, 2012, Respondent implemented material changes to employees' terms and conditions of employment and engaged in direct dealing in violation of Section 8(a)(1) and (5) of the Act. The Complaint further alleges that Respondent violated Section 8(a)(1) and (5) of the Act by implementing an attendance policy on August 27, 2012, unlawfully delaying bargaining, and by conditioning bargaining on the withdrawal of a properly filed unfair labor practice charge.

A hearing was held in Saginaw Michigan on July 24 -26, 2013. ALJ Mark Carissimi presided. On December 13, 2013, ALJ Carissimi issued his decision, finding that Respondent violated Section 8(a)(1) and (5) of the Act by unlawfully implementing an attendance policy without providing the Union notice and an opportunity to bargain and

¹ References to the record are hereinafter abbreviated as follows: JD/_ = Administrative Law Judge's Decision, page number/ line number; GC __ = General Counsel Exhibit; R __ = Respondent's Exhibits; CP __ = Union's Exhibit; Tr. = Transcript

by unlawfully delaying bargaining with the Union. The ALJ dismissed portions of the Complaint that alleged that on May 17, 2012, Respondent implemented changes in wages, hours, and other working conditions of bargaining unit employees and engaged in direct dealing. The ALJ also dismissed the Complaint allegation that Respondent unlawfully conditioned bargaining on the Union's agreement to withdraw an unfair labor practice charge.

Counsel for the General Counsel submits that the ALJ erred in dismissing the above stated complaint allegations. In that regard, Board law contradicts the ALJ's legal analysis in finding that Respondent is not a "perfectly clear" successor pursuant to *NLRB v. Burns International Security Services, Inc.*, 406 U.S. 272, 294-295 (1972) and *Spruce Up Corp.*, 209 NLRB 194 (1974), *enfd* 529 F.2d 516 (4th Cir. 1975). As the evidence in the hearing showed (and as credited by the ALJ), Respondent is a perfectly clear successor to the Saginaw Public School District (SPSD). As such, Respondent violated Section 8(a)(5) of the Act by implementing a host of changes to mandatory subjects of bargaining on May 17, 2012. Moreover, because Respondent was a perfectly clear successor to the SPSPD when it implemented such changes, it unlawfully bypassed the Union and directly dealt with unit employees on the same date. In addition, the ALJ's finding that Respondent did not violate Section 8(a)(5) of the Act by conditioning bargaining on the withdrawal of a properly filed unfair labor practice charge contradicts Board policy and precedent.

II. FACTS

A. Background

The SPSD and the Union had a collective bargaining relationship concerning a bargaining unit of bus drivers and bus monitors for several years, as embodied by successive collective bargaining agreements. The most recent collective bargaining agreement was entered into by the Union on behalf of its affiliate Local Union 8410, with effective dates from August 27, 2010 through August 31, 2012. In June 2013, the Union assigned the bargaining unit to Local 9036 for administrative reasons, without any objection from Respondent. (Tr. 31, 89, 140-142, 161, 162, 173, 241-242; CP 7, CP 8; JD 5/8-10)

In 2011, prompted by action from the State of Michigan's legislature, the Saginaw Public School District sought bids to outsource its bus services. Respondent, allegedly the largest provider of bus services in North America, zealously sought the opportunity to provide such services for the school district. (Tr. 354, JD 8/20-24, 8/28-30)

B. Summer and Fall 2011

In the summer of 2011, the school district sought "requests for proposals" (RFPs) from vendors to explore outsourcing its bus service function. (JD 8/ 29-30) Respondent and at least two other entities submitted bids pursuant to the RFP. Dr. Kelley Peatross, Assistant Superintendant for the SPSD, facilitated this process. The SPSD required from

prospective vendors that they commit to the same wages and comparable benefits for employees. (Tr. 354-355, 368)²

In July 2011, SPSD conducted an interview with Respondent regarding its bid. Peatross, Phoebe Wood, the district's chief financial officer, Robert Bradley, the school district's facilities' manager, Daniel Kinsley, Respondent's development manager, and Justin Grygiel, Respondent's manager, attended the meeting. Union business agent Tonya Devore also attended the meeting at the request of Peatross. (Tr. 174, 354, 449; JD 8/31-36) During this meeting, Kinsley stated that Respondent would hire bargaining unit employees, provided that they met Respondent's hiring criteria which included an application, interview, background check, and a drug screen. Kinsley further stated that Respondent would maintain the current wages for employees and employees would be eligible for raises in the future. When a question was posed as to whether Respondent intended to recognize the Union, Kinsley said that Respondent would do so if it hired at least 51 percent of the employees. Importantly, Kinsley also stated that the Respondent fully intended to hire a majority of the district's employees if they met the hiring criteria. In fact, Kinsley stated that, at Respondent's other locations, Respondent hired between 80 to 90 percent of the existing bargaining unit. (Tr. 452, 453, 177, 179, 475, JD 8/38-45, JD 9/1-5)³

² The ALJ failed to address Peatross' testimony to the extent she testified that SPSD required that prospective vendors commit to certain terms and conditions of employment before the district would award a bus services' contract. In particular, SPSD required that vendors maintain current wages and provide comparable benefits. (See Tr. 354-355, 360-362) Interestingly, throughout his decision, the ALJ considers Peatross a "neutral" witness (even though she testified on behalf of the General Counsel) and credits her account of various meetings even over other General Counsel witnesses. (See e.g. JD 9/49-50; JD 12/9-10)

³ In his decision, the ALJ noted that "there was not much variance in the testimony of the [General Counsel and Respondent's] witnesses regarding this meeting."

In October 2011, the SPSPD's board of directors selected Respondent as its provider of bus services and approved a contract. (Tr. 454; JD 9/40-42) Notwithstanding the approval, Dr. Carlton Jenkins, the school district's superintendent, decided not to go forward with the outsourcing at that time. (Tr. 455; JD 9/40-42) As a result, the school district withdrew its RFP. (JD 10/1-2) Although the SPSPD notified Kinsley that the outsourcing would not go forward as planned, Kinsley vigorously continued to pursue its relationship with the school district in hopes that it would reconsider. (JD 10/1-2; Tr. 455, 486, 491) Kinsley was motivated to pursue this relationship with the school district, in part, because he would receive a commission if the school district chose Respondent as the bus provider for bus services. Kinsley and 5 to 6 other employees on the business development team would split a percentage of the total contract price, worth \$9.5 million. (Tr. 492-293) Commission was based on .0045% of the total contract price. Provided that Respondent evenly split the commission among 5 team members, Kinsley stood to receive \$8550.00 if he closed the deal with the SPSPD.⁴

C. Saginaw Public School District Reconsiders Outsourcing and March 2, 2013 Meeting.

Eventually, the SPSPD reconsidered its position regarding outsourcing and reopened its RFP. (Tr. 455) On February 3, 2012, Respondent submitted a new proposal to the school district. (Tr. 455; GC 20; JD 10/7-9) At the request of Peatross, Respondent met with bargaining unit employees in the school district's garage on March 2, 2013. At the time of the meeting, and based on Respondent's second proposal, the SPSPD had already taken action to approve Respondent as the new provider of the bus services,

⁴ The ALJ did not address the testimony regarding Kinsley's financial motivation in his decision.

although the terms of the contract had not been finalized. About 40 bargaining unit employees attended the meeting, as did Peatross, Kinsley, Respondent's general manager Doug Meek, and Robert Bradley, an employee of Sodexo who supervised bus drivers and attendants. (Tr. 318, 319, 346, 347, 359, 400, 417, 418; JD 10/ 6-18) The purpose of the meeting was to discuss the transition of bus services to Respondent and to address any concerns employees had relative to their employment.

Respondent's primary spokesperson was Doug Meek. Meek told employees that they would receive applications from Respondent. In addition, he told employees that the applications had to be filled out completely. Meek told employees that, in order to be hired by Respondent, they had to undergo a drug test, physical exam, and receive some training. After Meek spoke, some employees asked how many employees would be hired. Meek, in an effort to assuage any concerns, said that Respondent typically hired between 80 to 90 percent of the existing workforce when Respondent has taken over bus operations in the past. Meek further said that if Respondent hired 51 percent of the workforce, then employees would bring their union representation with them. Some employees asked how many hours would be guaranteed to employees, and Meek testified that Respondent would use the school district's routing system, but that Respondent did not know how many hours would be worked at that time. In response to some other questions regarding terms and conditions of employment, Meek said that those items would be negotiated. During the hearing, Meek did not identify which terms that would allegedly be subject to negotiations. (JD 10/31-48, JD 11/ 1-6)

Employees Mille Stidhum-Stewart and Michelle Ezell attended the March 2nd meeting. Stidhum-Stewart testified that duties and wages would remain the same.

Michelle Ezell testified that Meek stated that the transition from the school district to Respondent would be smooth.⁵ (JD 11/37-39, JD 11/ 44-46)

D. May 16, 2012 School Board Meeting:

On May 16, 2012, the school district board of directors held a regularly scheduled meeting. (Tr. 45) This meeting, as with all other school board meetings, was open to the public. (Tr. 45) The approval of the terms of the contract between Respondent and the school district was one of the items on the agenda. (Tr. 44-46) Devore, Union unit president Clint Bryant, at least four to five other bus drivers and monitors attended the school board meeting because they had been told that the topic of outsourcing the bus services was on the meeting's agenda. (Tr. 46, 179; JD 12/ 15-21)

During the meeting, one of the board members asked the superintendent what the wages of employees would be once Respondent took over the bus services. The question was referred to Kinsley, who took the podium to answer that question and others regarding terms and conditions of employment. Kinsley said that Respondent would maintain the employees' current wages. In response to a question regarding hiring, Kinsley said that, much like the school district, employees would have to undergo a background check, drug screen, and pass a physical examination. So long as the employees passed that hiring criteria, Respondent would hire them. Kinsley said that Respondent would also recognize the Union if it hired 51 percent of the existing workforce. (Tr. 49, 50, 181, 182, 463, 480; JD 12/26-38) Kinsley did not identify any terms and/or conditions of employment that

⁵ In the JD, the ALJ credited Meek's version of the March 2 meeting over Stidhum-Stewart and Ezell's versions, but only "to the extent it conflicts with that of Meek." (JD 12/ 3-4) The portions of the above cited testimony of Stidhum-Stewart and Ezell does not explicitly conflict with Meek's testimony.

would change should Respondent's contract be approved. (Tr. 52, 184). Kinsley suggested that the board take "swift action" to approve the terms of Respondent's contract. (Tr. 182-184) After this discussion, the board voted to approve the terms of Respondent's contract. Section 20 of the contract provides: "The District and Provider have agreed to the terms of this Agreement as of this 16th day of May 2012." Representatives from the school district and Respondent signed the contract on May 24 and June 1, 2012, respectively. (GC 17) The contract provides that the initial duration is from July 1, 2012 through June 30, 2017. (GC 17)

E. Meeting in the Parking Lot

The school board meeting ended at about 11:00 p.m. Immediately following the meeting, Devore, Bryant, and the other bargaining unit employees gathered in the parking lot. (Tr. 52, 54; JD 14/1-2) Kinsley approached the group and told one of the employees not to worry and that everything would be fine. (JD 14/5) Devore told Kinsley that Respondent would be required to recognize the Union if it hired 50 percent +1 and not 51 percent of the district's employees. Kinsley acknowledged that he was in error and that Devore was correct. (JD 14/ 20-24) Kinsley further stated that Respondent's goal was to hire as many employees as it could if the employees met all of the hiring protocols and that they "shouldn't have anything thing to worry about in coming to work for our company." (JD 14/ 27-28) Kinsley also told employees that Respondent was "union friendly." (JD 14/10-11)

F. May 17, 2012 Meeting

On May 17, 2012, at 5:30 a.m., Respondent held a mandatory meeting with the bus drivers and monitors at the school district's garage. (Tr. 56; JD 14/ 44-45) For Respondent, Meek, Human Resources Manager Rick Kellerman, Kinsley, human resources manager Char Campbell, and location manager John Kiraly were present. Peatross and Bradley were also present. Almost all of the bargaining unit employees were present. (JD 14/44-46; JD 15/ 1-2) At the outset of the meeting, Respondent distributed a document, dated May 17, 2012. (GC 5) The first paragraph of the document read:

“Welcome to First Student. As you know, First Student has been selected as the student transportation provider for the Saginaw Public Schools. We are looking forward to working with you to serve the community.” (GC 5; JD 15/8-10)

The document contained material and substantial differences with respect to terms and conditions of employment when compared to the terms contained in the collective bargaining agreement between the Union and the SPSPD. For instance, the rate of pay for employees changed. Employees were to receive a “B” hourly rate for non-transportation duties (i.e. attending training, employee or school meetings, clerical work, bus washing, etc.). Under the collective bargaining agreement, employees received one hourly wage rate for all services rendered. Further, the pay guarantee was different. With the school district, bus drivers were guaranteed 4.5 hours per day and monitors were guaranteed 4.3 hours per day. As set forth in its May 17 document, Respondent would provide employees a guarantee of 1.5 hours for each a.m. and p.m. shift, and midday routes would be paid the minimum of 1.0 hours. (GC 5, p.2) Moreover, the pay for training was different. Under the terms with the school district, employees were paid their hourly rate for training. Under Respondent's terms as articulated in the May 17 document, employees

were to be paid flat rates for training. (GC 5, p.3) Further, Respondent's dispute resolution process was different, as it outlined a process by which employees would bring their concerns directly to management, rather than through a collectively-bargained grievance procedure. (GC 5, pg. 4; Tr. 58-62, Tr. 327; JD 15/34-45; 16/9-15) The May 17 document also stated that all Respondent's driver and monitor positions were considered part-time and that benefit programs would be designed for a part-time workforce. (GC 5)

The May 17 document also contained Respondent's hiring criteria, which was commonplace in the busing industry. In particular, the document stated that, upon successful completion of the following, formal offers of employment should be extended:

Background checks

Employment history checks

Driving history review

Criminal records checks

Physical exam

Drug test

Physical Performance Dexterity Test (PPDT)

Completion of training requirements and classroom and behind the wheel evaluations

The document further provided that the employees had to complete applications and be interviewed. (GC 5; JD 15/12-32) Respondent provided employees with application packets.

After Respondent's representatives, Meek and Kellerman, went over all of the changes that were being implemented, bargaining unit employees expressed surprise and agitation, as this was the first time Respondent identified specific changes to employees'

terms and conditions of employment. (Tr. 325) In fact, employee Tony Balls stood and exclaimed: “What the fuck?!!” (Tr. 572) Respondent told employees that these changes were to take effect immediately or at the beginning of the next school year. (Tr. 62, 327) Bus drivers did not work during the summer months because school was out of session.⁶

G. The Hiring Process Begins

As stated previously, during the May 17 meeting, Respondent went through the hiring process. Respondent considered the hiring process to begin on May 17, 2012. In that regard, Meek testified that hiring commenced by the distribution of applications for employment, and concluded at the time offers extended to employees. (Tr. 437) Meek testified: “Well obviously May 17 is day one, and the last day, I couldn’t give you a specific answer to that question because I don’t know the dates of offers extended to the employees.” (Tr. 437) Although Respondent provided applications to employees on May 17, it told employees that the application procedure was a formality.⁷ (Tr. 64, 526-528)

Although all employees were supposed to attend interviews, Respondent did not interview all employees. For example, Respondent never interviewed Stidhum-Stewart. (Tr. 328; JD 17/32). Bryant’s interview lasted between 5 and 10 minutes, and consisted of a woman named “Lucy” asking questions about whether he liked his job. (Tr. 65) The interviews and some of the required training took place during the summer of 2012. (Tr. 104)

⁶ The ALJ failed to discuss the un rebutted testimony that employees expressed surprise during the May 17 meeting.

⁷ The ALJ failed to discuss the testimony of employees who testified that that Respondent told employees that the application process was a formality. Likewise, the ALJ failed to discuss the testimony of Meek, who the ALJ repeatedly credited throughout his decision, with respect to Meek’s testimony that he considered the hiring process to begin on May 17, 2012.

Employees who passed the hiring prerequisites were provided letters offering employment, beginning in late June 2012 and concluding in August 2012. (R. 6)

Respondent hired 42 out of 55 employees who had been employed by the school district, an overwhelming majority of the bargaining unit employees. (R 6, R 12, JD 17/40-43)

H. Hiring Practices Commonplace in the Industry

Bus drivers Bryant and Ezell and bus monitor Stidhum-Stewart testified that Respondent's hiring prerequisites such as the physical examination, drug tests, dexterity tests, and some classroom training were common in the industry, and were part of the requisites for the drivers to maintain their commercial drivers' licenses. Each of these employees underwent these exams upon their hire at the SPSD. Further, employees were subject to random drug tests while employed by the school district. (Tr. 51, 326, 348)

Union business agent Devore testified that, in her experience as business agent and as an employee, Respondent's hiring prerequisites were typical. (Tr. 177, 178) Further, Meek, a thirty year veteran in the bus transportation industry, testified that Respondent's hiring requisites were the industry standard throughout the country.⁸ (Tr. 411, 433)

I. Beginning in May 2012, Respondent Recognizes the Union and Negotiates Seniority for its Employees

Immediately following the May 17 meeting, Bryant, and union stewards Ken Barry and Shanta Rowe introduced themselves to human resources manager Kellerman as union

⁸ The ALJ did not address the detailed testimony or make any findings with respect to the General Counsel and Respondent's witnesses' testimony regarding the routine nature of Respondent's hiring criteria throughout the bussing industry. As will be discussed in the Argument Section, this testimony is critical.

representatives. (Tr. 578) Sometime prior to June 14, 2012, Kellerman sent Bryant an email to discuss seniority issues. (Tr. 577-578) As a result, Kellerman and location manager John Kiraly set up a meeting with the Union representatives to be held on June 14, 2012.

On June 14, 2012, the meeting was held. Kellerman, Kiraly, Bryant, Barry, and Rowe attended. The purpose of this meeting was to negotiate the seniority rankings of employees who held dual roles as bus drivers and monitors. (Tr. 580) During the meeting, the parties agreed to create a revised seniority list. Kellerman sent Bryant an email on July 19, stating in part: "Thanks for meeting with John Kiraly and me on June 14 to try to come up with a mutual way to handle the seniority rankings for the dual role assistants/drivers...Attached is a preliminary draft of the seniority lists for drivers and monitors with the dual-role folks listed on both. Please review the list and let me know tomorrow (Wednesday, June 20) if there are any changes or further discussions necessary." (CP 10) Bryant reviewed the email, made revisions to the seniority list and sent it back to Kellerman. (Tr. 581; CP 11, CP 12) Respondent used the negotiated list as its seniority list for the 2012-2013 school-year. (Tr. 582; JD 17/1-26)

J. Respondent Unreasonably Delays Bargaining and Attempts to Coerce the Union to Withdraw an Unfair Labor Practice Charge:

On May 18, 2012, Devore sent Kinsley and Meek letters by certified mail and email wherein she requested the parties meet to bargain. (GC 11, GC 12) Shortly thereafter, Devore called Meek, and orally requested bargaining. Rather than agreeing to set up negotiations dates, Meek told Devore to call Audrey Adams-Mondock; however the two did not speak until June. (Tr. 197) When Devore finally spoke to Adams-Modock,

she requested to set up dates for bargaining and told Adams-Mondock that she believed that the parties should start with the contract that was in place with SPSPD. Adams-Mondock replied that since hiring was not complete, Respondent would not commence negotiations. (Tr. 194, 551) After Devore spoke with Adams-Mondock, she sent Adams-Mondock a copy of the Union-school district collective bargaining agreement. (Tr. 195, GC 13)

Devore called Adams-Mondock at least five times between June and November 2012 and left messages. Adams-Mondock never returned Devore's call. (Tr. 197) Although Adams-Mondock informed Devore during their June conversation that she expected to be on maternity leave between August and November 2012, she did not inform Devore of the start of her maternity leave or identify who would be handling the negotiations for Respondent in her absence. (Tr. 197, 552) Devore did not speak to Adams-Mondock until November 2012, after formal collective bargaining sessions began.

In the meantime, Devore requested that Bryant assist the Union in trying to get Respondent to negotiate a successor agreement. Bryant suggested that Devore contact location manager John Kiraly and Respondent attorney Kristen Huening. On August 29, 2012, Devore sent Kiraly a letter requesting bargaining at a mutually convenient time and date. (GC 14) Kiraly did not respond. On August 30, 2012, Devore sent Huening a letter, requesting bargaining. (GC 15) Huening called Devore and told her that she would not be handling negotiations and that she would forward the request to bargain to someone else. (Tr. 200)

Beginning September 18, 2012, Devore commenced email correspondence with Respondent's attorney Raymond Walther. (Tr. 201-202; JD 19/17) Walther told her that Adams-Mondock would be handling the negotiations when she returned from leave in November 2012. Devore requested that negotiations begin sooner or that Respondent agree to reinstate the terms of the school district's collective bargaining agreement. (GC 16; JD 19/30-34) On September 21, 2012, the Union filed a charge in Case 07-CA-089760, alleging that Respondent refused to recognize the Union as the collective bargaining representative and that Respondent refused to bargain. (GC 18; JD 19/24)

Upon receipt of the charge, Walther emailed Devore on October 1, 2012, stating the following:

"I had some time free up in October if you would still like to start negotiations this month. If you are willing to withdraw the ULP charge, I can send you a recognition letter and we can get some dates scheduled. (Of course, if you are not willing to withdraw the ULP charge, then we will not be able to begin negotiations until the Board concludes its investigation.)" (GC 16; JD 19/43-45, JD 20/ 1-3)

On October 3, 2012, Walther reiterated its demand that Devore withdraw the unfair labor practice charge by insisting to Devore as follows:

"Could you please let me know today if the Union intends to begin negotiations on October 15, 2012 and drop the pending ULP charge?" (GC 16; JD 20/5-7)

Devore responded to Walther's email, stating that she was disappointed that Respondent was conditioning negotiations on the Union's withdrawal of the charge. (GC 16; JD 20/8-10) Nonetheless, the Union and Respondent finally commenced bargaining for a new agreement on October 15, 2012; nearly two months after the Union and the SPSPD's collective bargaining agreement expired on August 31, 2012. (GC 2)

III. ARGUMENT

Respondent admits that it is a successor to SPSP within the meaning of the Act, as it substantially continued the SPSP's busing operation and hired a majority of SPSP's bargaining unit employees. As a successor, Respondent admits that it has a collective bargaining relationship with the Union with respect to the bargaining unit employees. However, it asserts that it was free to set the initial terms of the employees' employment upon assuming the busing operations. Accordingly, Respondent asserts that it did not commit any unilateral changes during the summer of 2012 because it had no duty to bargain with the Union regarding these terms at that time. Respondent's argument and the ALJ's Decision in that regard are contrary to established Board law.

A. The Successor Doctrine

Under the successor doctrine, an employer may unilaterally set the initial terms of employees' employment on which it will hire its workforce unless "it is perfectly clear that the new employer plans to retain all of the employees in the unit [in which case] it will be appropriate to have him initially consult with the employees' bargaining representative before he fixes terms." *NLRB v. Burns International Security Services, Inc.* 406 U.S. 272, 294-95 (1972). The Board has held that the "perfectly clear" successor exception does not apply where an employer makes it "clear from the outset" that it intends to set its own initial terms by announcing new terms prior to or simultaneously with its offer of employment to the predecessor's employees. *Spruce Up Corporation*, 209 NLRB 194, 195 (1974), *enfd* 529 F.2d 516 (4th Cir. 1975)

B. The Bargaining Obligation Attaches to a Successor When it Manifests Intent to Hire a Majority of the Predecessor's Employees Without Clearly Announcing New Terms.

When a successor employer indicates its intent to retain the predecessor's employees without indicating that their terms will be altered, it becomes a "perfectly clear" successor and may not then unilaterally change the terms and conditions of employment. See *Canteen Co.*, 317 NLRB 1052, 1052-1054 (1995), (Board held that a company was a perfectly clear successor when it remained silent with respect to terms and conditions of employment when it stated its intent to hire all of the predecessors' employees); See also *Roman Catholic Diocese of Brooklyn*, 222 NLRB 1052 (1976), enf. denied, in part, sub nom. 549 F.2d 873 (2d Cir. 1977), (Board imposed an obligation to bargain about initial terms of employment prior to the new employer's extension of formal offers of employment to the predecessor's employees when the employer made an unequivocal statement to the union of an intent to hire all of the predecessor's employees, but did not mention any changes in terms and conditions of employment); See also *Fremont Ford*, 289 NLRB 1290, 1296-1297 (1988), (Board imposed an initial bargaining obligation when the new employer manifested intent to retain the predecessor's employees prior to the beginning of the hiring process by informing the union it would retain a majority of the predecessor's employees). Much like this case, in *Fremont Ford*, the employer did not announce significant changes to initial terms and conditions of employment until it conducted hiring interviews. *Id.* at 1296-1297.

The successor may not wait until it completes the hiring process before the duty to bargain arises. For example, in *Du Pont Dow Elastomers, L.L.C.*, 332 NLRB 1071

(2005), the Board held an employer who announced its intent to extend offers of employment to all the predecessor employees on a particular date was obligated to recognize the union and bargain with it on that date and could not wait until it finished its hiring process before bargaining. In *Helnick Corporation*, 301 NLRB 128, 128 fn.1 (1991), the Board adopted the administrative law judge's finding that an employer became a perfectly clear successor on the day it informed the predecessor's employees that it intended to hire them all without announcing different terms. In *Elf Atochem North America*, 339 NLRB 796, 807 (2003), the Board adopted the administrative law judge's finding that a perfectly clear successor's obligation to bargain arises when it intends to hire the predecessor employees without clarifying its intent to change terms and conditions of employment. Specifically, the Board held that the employer became a perfectly clear successor to an employer three months prior to it beginning operations. *Id.* at 796.

C. The New Employer Must Specifically Identify New Terms and Conditions of Employment.

The new employer must sufficiently detail the new terms and conditions of employment to the predecessor's employees in order to have the right to set initial terms of employment without bargaining with the employees' union. For instance, in *Fremont Ford*, supra, the Board found that the successor's statements to employees that seniority would be changed and that it would institute a flat rate were, in and of themselves, insufficient to establish intent to establish new conditions of employment. In *Road & Rail Services*, 348 NLRB 1160, (2006), the Board held that an employer was a perfectly clear successor when, although it told employees that some terms of employment would be

negotiated with their union, it did not indicate that it would unilaterally establish initial terms and conditions of employment. *Id.* at 1161.

The Board has also held that a successor who sent letters to the predecessors' employees stating that "other" terms and conditions of employment will be set forth in an employer's handbook, was not privileged to set the initial terms and conditions of employment because the successor's notice was too vague to put the employees on notice that employees' terms and conditions of employment would change under the new employer. *Windsor Convalescent Center of North Long Beach*, 351 NLRB 975 (2007), *enfd. denied* 570 F3d 354 (DC Cir. 2009). In that case, the Board further found that the employer's supervisors' statements in response to employees questions about their terms of employment such as "don't even worry about it" and "nothing was going to change" was proof of finding that the employer was perfectly clear successor. *Id.* at 990, fn 29.

D. Third Party Statements

Statements and agreements made by successor employers to third parties is evidence the Board considers in finding whether successors to fall within the perfectly clear successor exception. For instance, in *Springfield Transit Management, Inc.*, 281 NLRB 72 (1986), the employer took over the bus services for a public transit authority pursuant to a contract between the employer and the public authority. The terms of the contract between the transit authority and the employer stated that the employer should, among other things, maintain the wages and benefits of the bargaining unit employees pursuant to the collective bargaining agreement between the public authority and the employees' union. The Board found that the agreement between the authority and the

employer, whereby the employer promised to maintain wages and benefits, was proof that the employer was a perfectly clear successor. *Id.* at 78. Likewise, in *The Denham Company*, 206 NLRB 659 (1973), the Board conferred perfectly clear status on a successor based, in part, on the successor's agreement with the predecessor to maintain all the predecessor's employees on the successor's payroll with no interruption of employment for at least thirty days.

E. The ALJ erred in finding that Respondent is not a Perfectly Clear Successor to the Saginaw Public School District (Cross Exceptions #1-9)

1. Respondent's Representations From July 2011 through May 16, 2012 Establish that Respondent is a Perfectly Clear Successor as of May 16, 2012.

Despite the ALJ's findings to the contrary, Respondent's representations to the SPSPD, the Union, unit employees and the public from July 2011 through May 16, 2012 show that Respondent is a perfectly clear successor because during that time, Respondent announced to the SPSPD, the Union, unit employees and the public that employees' terms and conditions of employment would remain the same should the school district award it with the bus services' contract.

As the ALJ rightfully noted, the General Counsel and Respondent's witnesses testified similarly with respect to July 2011 meeting held at the school district's offices, where Respondent's initial bid was discussed. It is undisputed that Kinsley told Devore and Peatross that Respondent intended to maintain the wages of employees. On direct examination, Kinsley testified that Respondent intended to recognize the Union should the

employees meet Respondent's hiring protocols, and he assured Peatross and Devore that Respondent had a record of hiring between 80 to 90 percent of a predecessor's employees. During this meeting, Kinsley never identified any term or condition of employment that would change should Respondent be awarded the contract with the school district.

Likewise during the March 2 meeting, Respondent, who had already been chosen as the employees' new employer for the next school year, left employees with the impression that their terms and conditions of employment would remain substantially the same and that the transition to Respondent would be "smooth." Although Meek stated that some items would be subject to "negotiations," he never clarified which items would be "negotiated" to this lay group of bus drivers and monitors. Moreover, although the ALJ credited Meek with respect to the March 2 meeting, Meek never identified which terms would be subject to negotiations. Hence, as the Board concluded in *Road & Rail Services*, supra, although Respondent told employees that some terms of employment would be subject to negotiations, it did not indicate that it would unilaterally establish initial terms and conditions of employment.

Moreover, any ambiguity with respect which terms would be subject to negotiations and/or the manner in which Respondent would implement different terms should be resolved against Respondent. *Freemont Ford*, 289 NLRB 1290, (1988), citing *Love's Barbeque Restaurant*, 245 NLRB 78, 82 (1979). To the extent it intended not to be a perfectly clear successor, Respondent had an obligation to be unequivocal in that regard. Furthermore, as established by the case law cited above, telling employees that certain terms may simply be different, subject to change, or "negotiated" is insufficient to put employees on notice of new conditions should a new employer succeed the

employees' current employer. In fact, all terms and conditions of employment would eventually have to be negotiated. In the instant case, the issue is when the duty to negotiate arose. See discussion above regarding *Fremont Ford* and *Road & Rail Services*, supra.

In his decision, the ALJ does not cite any testimony by Respondent's witnesses or any documentary evidence that establishes that Respondent clearly announced new terms and conditions of employment on March 2 or any date prior to May 17. Although the ALJ states that "it is clear that from July 11, 2011 through May 16, 2012, the Respondent expressed a willingness to hire a majority of the School district employees," he states that employees were sufficiently put on notice that terms would be different. (JD 23/12-23)

The ALJ reasons, in pertinent part:

However, the Respondent also indicated that, if it did recognize the Union, a new contract would be negotiated. The Respondent indicated it did not know how many hours would be worked by employees. The Respondent stated that employees would retain their rate of pay, but, when asked about issues such as paid time off, vacation pay, and sick pay, the Respondent indicated that those issues would be subject to negotiations.....The Respondent stated that employees would be employed at their existing wage rates but beyond that was **not specific** with respect to the employment conditions it would apply. (JD 23/ 15-23) (emphasis added)

As the above language shows, the ALJ admits that Respondent was **non-specific** with regard to certain terms and conditions of employment, and that Respondent did not exactly know all the terms that would be implemented. Thus, the ALJ's reasoning that employees clearly knew that terms would be different misapplies established case law. Respondent had a duty to be clear during this time period, and it was not.

Again, during the board meeting on May 16, 2012, Respondent led the school board members, the Union, the employees, and the public at large to believe that terms and conditions of employment would remain the same. Kinsley admitted that he told those in attendance that wages would be the same and that benefits would be comparable. He also told attendees that the transition to Respondent would be “smooth.” As part of Respondent’s pattern, he never identified any term or condition of employment that would change once Respondent assumed the bus services. Even immediately following the May 16 board meeting, Kinsley told employees in the parking lot that they should not worry about their transition to becoming Respondent employees. This is not enough to establish an intent to hire employees under terms and conditions different from those established in the collective bargaining agreement between the Union and SPSD. On the contrary, the Board concluded in *Windsor Convalescent Center of North Long Beach*, 351 NLRB at 990, fn 29, that the employer’s supervisors’ statements in response to employees questions about their terms of employment such as “don’t even worry about it” and “nothing was going to change” was proof of finding that the employer was perfectly clear successor. Kinsley testified that he knew that maintenance of wages and other terms of employment for the employees were very important to the district. Kinsley was motivated to tell the school district officials what they wanted to close the deal with Respondent, urging the board to take “swift” action to approve the terms of the bus services’ contract.

The representations Respondent made to the school district, as testified by Peatross, is further proof that Respondent is a perfectly clear successor to the school district. As the above-cited case law establishes, these representations provide an objective light on whether successors intended to keeps terms and conditions of

employment the same. Similarly, the representations Respondent made to the public during the May 17 school board meeting, as testified by Kinsley, show that Respondent led others to believe that employees' terms and conditions of employment would remain the same under Respondent's management.

2. The ALJ's Finding Respondent is Not a Perfectly Clear Successor Based on the Fact That it Unequivocally Notified Employees of the Terms of their Employment on May 17, 2012, Prior to the Employees Submission of Applications, is not Supported by Board Law.

In his decision, the ALJ bases his conclusion that Respondent is not a perfectly clear successor, in part, on the fact that on May 17, 2012, prior to the employees submitting their applications for employment with Respondent, Respondent clearly announced changes to terms and conditions of employment. To that end the ALJ reasoned that Respondent was not silent nor did it mislead employees regarding their prospective terms of employment should they decide to become Respondent employees. The ALJ further finds that Respondent's obligation to bargain did not attach until August 17, 2012, when Respondent had hired a majority of employees.

The ALJ misses the point. As of May 17, 2012, Respondent's bargaining obligation had already attached. As stated previously, a successor's bargaining obligation attaches when it manifests intent to hire a majority of the predecessor's employees without clearly announcing any changes to the employees terms and conditions of employment. Respondent first announced that it intended to hire a majority of the predecessor's employees in July 2011, again on March 2, 2012, and finally on May 16, 2012. Although Respondent told employees that it would hire as many employees that met the hiring

criteria, it consistently followed this statement by assuring employees that it typically hires between 80 and 90 percent of a predecessor's employees. Furthermore, the hiring criteria were commonplace in the bussing industry. The hiring prerequisites such as background checks, drug tests, and physical examinations were the same conditions of employment the SPSD required of unit employees. In fact, employees were required to meet most of these conditions as conditions for continued employment. That an employer requires employees to meet its hiring standards does not change the fact that it is a perfectly clear successor. See *Hilton's Environmental, Inc.*, 320 NLRB, 437, 438 (1995), where the Board found that an employer is a perfectly clear successor even though it told employees that their employment would be conditioned upon an application and an interview.

The ALJ found that it was "clear from July 2011 through May 16, 2012, the Respondent expressed a willingness to hire a majority of the School District's employees," (JD 23/12-14). When Respondent made these representations from July 2011 through May 16, 2012, it never clearly identified any terms of employment that would change for the unit employees. The Board law unambiguously states that Respondent had to do so, at the same time that it manifested intent to hire a majority of the school district's employees, in order to avoid its bargaining obligation.

Accordingly, the ALJ's reliance on the specifics as to what Respondent told employees on May 17, 2012 with respect to their new terms of employment from that point forward is not relevant in determining whether Respondent was a perfectly clear successor. Rather, the implementation of the terms specified on May 17, 2012 are unilateral changes and evidence of direct dealing.

3. The ALJ Erred in Finding that the June 2012 Negotiations is Not Probative of Finding that Respondent is a Perfectly Clear Successor.

In his decision the ALJ states:

I do not find that the fact that Kellerman and Kiraly met with Bryant and two union stewards in June 2012, and reached an accord in the manner in which would be applied for dual role employees is sufficient to deprive the Respondent of its right under *Burns* and *Spruce Up* to unilaterally set its initial terms of employment. **As I have indicated, it was anticipated that the Respondent would recognize the Union.** This type of cooperation is both practical and laudable. To use it as a basis to deprive the Respondent of its right under *Burns* to unilaterally establish conditions of employment would, in my view, discourage continuity in the employment relationship in an arbitrary manner, a result which the Board clearly indicated a desire to avoid in *Spruce Up*.” (JD 24/17-26) (**emphasis added**)

The ALJ’s determination that it was anticipated that Respondent would recognize the Union, as early as June 2012, presupposes that Respondent must have anticipated that it would hire a majority of the school district’s employees as of that date. This presupposition is correct because Respondent manifested intent from July 2011 through May 16, 2012 that it would hire a majority of the school district’s employees.

As stated repeatedly throughout this brief, Respondent had the obligation, at those times, to clearly announce changes to terms of employment in order to avoid its bargaining obligation over initial terms and conditions of employment. The fact that Respondent agreed to bargain over seniority lists that would be used in the next school year is evidence that: (1) Respondent acknowledged its bargaining obligation to the Union in June 2012; (2) that the bargaining obligation arose prior to the completion of Respondent’s hiring process; and (3) that the hiring process was a mere formality. In fact, at the time of the bargaining,

Respondent had not offered letters of hire to any of the unit employees; hence, it must have assumed that a majority of employees would be hired if it was agreeing with the Union to use a negotiated employee/seniority list.

Thus, despite the ALJ's assertions, the June 2012 bargaining is extremely relevant in finding that Respondent was perfectly clear successor to the school district. The ALJ's assertion that the June 2012 bargaining should not be used a basis to deprive Respondent of its right to set initial terms because it would discourage "continuity in the employment relationship in an artificial manner" is circular logic. The ALJ states that the Board indicated a desire to encourage continuity in the employment relationship in *Spruce Up*. It would seem, therefore, that the Board's objective would have been reached if Respondent maintained the terms the terms of the school district's collective bargaining agreement until Respondent and the Union negotiated a new collective bargaining agreement.

4. The ALJ incorrectly distinguishes the Board's Decisions in *Elf Atochem North America, Inc.*, 339 NLRB 796 (2003); *Dupont Dow Elastomers, LLC*, 332 NLRB 1071 (2000); *Canteen Co.*, 317 NLRB 1052 (1995), *enfd.* 103 F.3d 1335 (7th Cir. 1997); *Hilton's Environmental, Inc.*, 320 NLRB 437 (1995); *Fremont Ford*, 289 NLRB 1290 (1988); and *Road & Rail Services*, 348 NLRB (2006) as materially different than the instant case.

In *Elf Atochem North America, Inc.*, 339 NLRB 796 (2003), the successor employer's bargaining obligation attached ten months prior to it taking over the predecessor's business operations. In that case, in January 1998, the employer sent the bargaining unit employees a memorandum stating that it would provide employment to all of the existing bargaining unit employees, honor seniority,

provide equivalent salaries, and also comparable health insurance. The employer did not extend offers of employment to employees until October of that year, and the employer did not begin operations until November 1998. The Board held that the employer's bargaining obligation began when employees received the memorandum in January because, on that date, it had informed employees that they would be retained and it did not inform employees that terms and conditions of employment would change.

Although the ALJ states that the instant case is distinguishable from *Elf Atochem North America*, he does not explain how. (See JD 25/ 30-45) The ALJ simply discusses the Board's holding in *Elf Atochem North America* and then states his own theory that Respondent is not a perfectly clear successor because Respondent told employees on May 17, 2012 specific terms and conditions of employment prior to inviting the employees to submit applications. The ALJ attempted to distinguish *Elf Atochem North America* by stating that the employer notified the union, prior to the takeover, that it would maintain wages, comparable benefits, and keep predecessor's collective bargaining agreement in place, and in the instant case, Respondent did not inform the Union or employees that SPSD's cba would continue. . However, the facts in *Elf Atochem North America* are precisely what happened in the instant case, with the exception of Respondent informing the Union or employees that the cba would continue in effect. Prior to Respondent taking over the school district's operations, it informed employees that it would hire a majority of employees without clearly announcing that the employees would be working under new terms. Just as the Board held that *Elf*

Atochem North America was a perfectly clear successor, so should it find that Respondent is a perfectly clear successor to Respondent.

In *Dupont Dow Elastomers, LLC*, the employer (DDE) told the unions that represented employees of its predecessor, in November 1995, that it intended to offer employment to all the bargaining unit employees and that it would not honor the collective bargaining agreements. DDE also said that it would maintain the same level of wages and benefits as outlined in those agreements and told the unions that it would add a bonus sharing program. In mid-December 1995, DDE held a series of meetings with the predecessor's employees, explaining what it had told the unions. DDE did not mention that it would change any other term or condition of employment other than the addition of the bonus sharing program. On about January 2, 1996, DDE presented unconditional offers of employment to the predecessors' employees. Several days later, and after some employees had already begun working for DDE, DDE implemented changes to terms and conditions of employment. The Board found that as of November 30, DDE was a perfectly clear successor and could not unilaterally implement changes to the employees' terms and conditions of employment, 332 NLRB 1071 (2000). The ALJ attempts to distinguish the facts here from those in *Dupont Dow Elastomers, LLC*, by stating that Respondent indicated in writing to employees what the initial terms of employment would be before employees submitted their applications. (JD 26/ 15-18)

Again, the ALJ misses the point. The date upon which employees submitted their applications is not relevant in the determination of whether a

company is a perfectly clear successor. In fact, *Dupont Dow Elastomers, LLC* is similar to the instant case because, as in that case, Respondent repeatedly told employees for months that terms of employment would substantially be the same, and that perhaps a few things would change or would be negotiated. Just as the Board found that DDE was a perfectly clear successor so should it find that Respondent was a perfectly clear successor to the SPSP.

In *Canteen Co.*, the Board found that an employer was a perfectly clear successor when it did not announce new wage rate changes until after it had announced its intent to retain the predecessor's employees. 317 NLRB 1052, 1054 (1995), *enfd* 103 F.3d 1335 (7th Cir. 1997). Likewise, in *Hilton Environmental, Inc.*, the Board found that an employer was a perfectly clear successor when it stated it intended to hire all of the predecessor's bargaining unit employees unless problems arose as result of information obtained on the job applications forms. In *Hilton Environmental*, the company did not announce changes to terms of employment when it announced that it intended to hire a majority of employees. 320 NLRB 437, 438 (1995). The ALJ states that these cases are distinguishable from the instant case because employees were notified what the terms of their employment would be before submitting their applications. (JD 26/15-18) The ALJ's analysis is untenable, for the same reasons as discussed throughout this brief.

In *Fremont Ford*, the employer was created under Ford Motor Company's dealer development program. Prior to the transfer of the dealership to Fremont Ford, the predecessor's management told bargaining unit employees that terms and

conditions of employment would be mostly the same. Only after the hiring process began did management tell employees that the terms of employment would be significantly different. The Board held that the employer was a perfectly clear successor because it did not “clearly announce its intent to establish a new set of conditions prior to inviting former employees to accept employment. Moreover, ‘any uncertainty as to what Respondent would have done absent its unlawful purpose must be resolved against Respondent, since it cannot be permitted to benefit from its unlawful conduct.’” 289 NLRB 1290, 1296-1297 (1988), citing *Love’s Barbeque Restaurant*, 245 NLRB 78, 82 (1979). The ALJ distinguishes this case from *Freemont Ford* by stating that in *Freemont Ford* Respondent notified employees of the terms of their employment prior to their submission of applications. (JD 26/31-31) Again, the ALJ is focusing on an irrelevant factor. The date of submission of applications is not determinative in finding whether company is a perfectly clear successor.

The ALJ notes that the employer in *Freemont Ford* actively misled employees and engaged in unlawful conduct to undermine the union’s status as bargaining representative. (JD 26/33-35) While Respondent may not have engaged in conduct to undermine the Union’s status as collective bargaining representative, Respondent tacitly misled employees from July 2011 through May 16, 2012, and otherwise failed to clearly identify changes to the employees’ terms and conditions of employment as required by Board law. Accordingly, *Freemont Ford* is persuasive authority and should be relied upon to find that Respondent is a perfectly clear successor to school district.

In *Road & Rail Services, Inc.*, the Board found, among other things, that the employer was a perfectly clear successor because it informed the union of its intent to staff its facilities with the predecessor's employees. At the same time, the employer did not give any indication that it would unilaterally establish initial terms and conditions of employment. The employer stated that it would make some changes, but that those changes would be negotiated with the union. 348 NLRB 1160, 1161 (2006) The ALJ distinguishes this case by stating that the issue was whether the employer violated Section 8(a)(2), (3), and (1) of the Act by recognizing the union and entering into a collective bargaining relationship prior to hiring the predecessor's workforce and commencing operations. The ALJ states that the issue in the instant case is different. (JD 26/37-45)

Although the ALJ tries to make this distinction, the distinction is more form over substance. In *Road & Rail Services*, the Board had to conclude whether the company was a perfectly clear successor in order to determine when the bargaining obligation attached to the employer to negotiate with the union that represented the predecessor's employees. The Board found that the company was a perfectly clear successor and therefore was permitted to and should have bargained with the employer regarding initial terms of employment. 348 NLRB 1160 (2006). The Board found that the employer did not violate the Act by doing so prior to hiring employees. As in *Road & Rail Services*, the Board must find whether Respondent is a perfectly clear successor based on representations made to the Union. The analysis in *Road & Rail Services* is applicable to the instant case.

5. The ALJ's Reliance on *Banknote Corporation of America*, 315 NLRB 1041 (1994); *Specialty Envelope Co.*, 321 NLRB 828 (1996); *Bekins Moving and Storage, LLC*, 330 NLRB 761 (2000); *Planned Building Services, Inc.*, 318 NLRB 1049 (1995); and *Marriot Management Services, Inc.*, 318 NLRB 144 (1995) is Misplaced.

In *Banknote Corporation of America*, the Board found that the employer was not a perfectly clear successor. In that case, prior to the successor taking over the predecessor's operations, it told employees that it intended to hire its workforce from the predecessor's employees. Simultaneously, it told the unions that it would not honor their collective bargaining contracts with the predecessor and that it was not making any commitments to recognize the union. The employer also held interviews before it began operations, but subsequent to telling the unions that it would not honor their contracts. During the interviews, the employer told employees that salary and benefits would remain the same, but that some things may change. The Board found that the employer was not a perfectly clear successor because the employer repeatedly put the unions and employees on notice that terms of employment would be different should bargaining unit employees be hired by the employer. 315 NLRB 1041, 1043 (1996).

The instant case is distinguishable from *Banknote Corporation of America* in that the employer in *Banknote* told the unions at the outset that it would not commit to recognizing them as the collective bargaining representative of the bargaining unit employees. In the instant case, Respondent told the Union and employees that it would recognize the Union, at all times from July 2011 through May 16, 2012. Indeed, Kinsley even told employees that the company was "union

friendly,” albeit, Respondent told the Union that it would recognize the Union only if it hired a majority of the school district’s employees. However, Respondent repeatedly assured the Union and employees that it typically hired between 80 to 90 percent of a predecessor’s employees and that the transition would be smooth. In *Banknote Corporation of America*, the company told the unions and employees from the outset that it would not honor the terms of the collective bargaining agreements. In the instant case, although Respondent said that it would have to negotiate a new contract with the Union, it never said that it would not honor the terms of the contract in the interim. Simply put, the employer in *Banknote Corporation of America* was much clearer than Respondent in terms of notifying the union and bargaining unit employees that they would be working under different terms and conditions of employment.

In *Specialty Envelope, Co.*, the Board found that the employer was not a perfectly clear successor on the grounds that it did not demonstrate that it intended to hire its predecessor’s employees until after the employees reviewed the application forms in which it “announced what terms of employment would be in effect, thereby informing applicants that if they applied and were accepted for employment, there would be different terms.” 321 NLRB 828, 832 (1996). The ALJ determined that the analysis in *Specialty Envelope Co.* should apply. (JD 25/15-20). Unlike the facts in *Specialty Envelope*, Respondent clearly demonstrated that it intended to hire a majority of predecessor’s employees *prior to* the employees receiving applications for employment. Accordingly, *Specialty Envelope* is inapposite to the facts of this case.

In *Planned Building Services, Inc.*, the Board found that the employer was not a perfectly clear successor because on the “very first contact” with the predecessor’s employees, the employer told the employees that it intended to hire them, but under different terms and conditions of employment. 318 NLRB 1049, 1049 (1995) In the instant case, Respondent first came into contact with the bargaining unit’s exclusive representative in July 2011 and nothing was said about changed terms and conditions of employment. Furthermore, when Respondent met with employees on March 2, it did not clearly announce that the employees would be working under new terms and conditions of employment. Additionally, during the May 16 parking lot meeting, Respondent told employees that they should not worry about their terms and conditions of employment and that Respondent was union friendly. Clearly, *Planned Building Services, Inc.*, is distinguishable from the instant case.

In *Marriot Management Services, Inc.*, the Board found that the employer was not a perfectly clear successor because it notified the predecessor’s employees that it would change health, welfare, and pension benefits prior to making a commitment to the employees’ union that it would hire the employees, 318 NLRB 144, 144 (1995). In the instant case, the opposite is true. Respondent told the Union in July 2011 that it would hire the predecessor’s employees prior to telling employees that it would change health, welfare and other benefit programs. Indeed, Respondent did not notify the employees of these changes until almost one year later in May 2012.

F. Respondent Violated Section 8(a)(5) of the Act by Unilaterally Changing the Terms and Conditions of Employment and by Directly Dealing with Employees. (Cross Exception #10)

For the reasons stated above, the ALJ erred in finding that Respondent was not a perfectly clear successor to the school district as of May 16, 2012. Because Respondent was a perfectly clear successor, it violated Section 8(a)(5) of the Act by implementing a laundry-list of new terms and conditions of employment during the May 17, 2012 meeting and at all points thereafter.⁹ It is undisputed that beginning May 17, 2012, when it provided employees with the information packet, which contained GC 5, Respondent implemented changes to the SPSD/Union collective bargaining agreement. Such changes included new wage rates, including a “B wage;” pay guarantees, training procedures, health insurance benefits, dental insurance, vision insurance, life insurance benefits, a dispute resolution processes, retirement plans, and leave requirements, among other policies. Regardless of whether the changes were to take effect in May 2012 or when the 2012-2013 school year began, none of these terms were negotiated with the Union. It is also undisputed that in the summer of 2012, Respondent implemented its policies in the employee handbook. The policies in the employee handbook had not been negotiated with the Union. Wages, training, benefits, leave requirements, dispute resolution, and retirement plans are all mandatory subjects of bargaining that

⁹ Paragraph 13 of the Complaint alleges that on May 17, 2012, Respondent unilaterally changed terms and conditions of employment. Paragraph 13 provides a *non-inclusive* list of terms that were changed beginning May 17, 2012, taking into consideration that all changes from the collectively bargained for terms in the Saginaw Public School District contract were unilateral changes because Respondent was a perfectly clear successor of the School District. At the time the Region issued complaint and, indeed, at the time of the trial, all of the unilateral changes were not known to the Union or General Counsel. As a remedy in this case, the Acting General Counsel is requesting that all of terms of the collective bargaining contract in effect with the School District be reinstituted, and that the affected employees be made whole.

require employers to provide notice and an opportunity to bargain before implementing. See e.g. *NLRB v. Katz*, 369 U.S. 736 (1962) (aspects of wages); *Inland Steel Co.*, 77 NLRB 1 (1948), *enfd.* 170 F.2d 247 (7th Cir. 1948)(retirement plans); *Allied Chem & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157(health insurance); *Raven Government Services, Inc.*, 331 NLRB 651 (2000)(hours of work and work schedules); *King Soopers, Inc.*, 340 NLRB 628, 628 (2003)(new work rules that could be the grounds for discipline). In this case, Respondent did not provide the Union with notice or an opportunity to bargain before implementing these changes, therefore Respondent violated the Section 8(a)(5) of the Act.

Not only did Respondent violate section 8(a)(5) of the Act by unilaterally altering the terms and conditions of employment, but it also violated Section 8(a)(5) by directly dealing with its employees. Direct dealing “involves dealing with employees (bypassing the Union) about a mandatory subject of bargaining.” *Champion Int’l Corp.*, 339 NLRB 672, 673 (2003). In *Permanente Medical Group, Inc.*, 332 NLRB 1143, 1144 (2000), the Board enumerated the criteria to be applied in determining whether an employer unlawfully engages in direct dealing: (1) the employer communicated directly with union-represented employees; (2) the discussion was for the purpose of establishing or changing wages, hours, and terms and conditions of employment or undercutting the union’s role in bargaining; and, (3) such communication was made to the exclusion of the Union, citing *Southern California Gas Co.*, 316 NLRB 979 (1995).

On May 17, 2012, Respondent effectively established new terms and conditions of employment with the employees who was represented by the Union. Respondent did not notify Devore, Bryant, or any other union official prior to establishing the new terms, thereby excluding the Union in the negotiation process. Respondent's conduct in this regard constitutes direct dealing in violation of Section 8(a)(5) of the Act.

G. Respondent Unreasonably Delayed Bargaining beginning on May 18, 2012. (Cross Exceptions #11 -12)

As the ALJ found, the Union made a "viable demand for recognition on May 18 which was continuing in nature." (JD 27/42-43) However, the ALJ does not use this date as the starting period to judge Respondent's delay in agreeing to bargain. Instead, the ALJ establishes August 17, 2012 as the starting date because, according to the ALJ, August 17 was the day that Respondent had hired a substantial and representative complement of its workforce. (JD 27/ 44-45)

Despite the ALJ's finding, for the reasons stated in this brief, Respondent's bargaining obligation began on May 16, 2012. Accordingly, Respondent was required to respond and bargain with the Union upon the Union's May 18, 2012 request.

Respondent did not agree to bargain until October 15, 2012, five months after the initial request. Devore and Adams-Mondock testified that after their initial conversation in June 2012, Devore called Adams-Mondock several times prior to October/November 2012, and Adams-Mondock never returned her call.

Although Adams-Mondock may have been on maternity leave, she did not provide Devore with contact information for the Respondent representative designated to fill her role while she was on leave. Adams-Mondock further testified that, although she was on leave for a portion of time between June and November 2012, she saw that Devore called her but decided not to return her phone calls. Even if Adams-Mondock believed that Respondent did not have a duty to begin bargaining until sometime after hiring was complete, her belief was incorrect. As already established, Respondent's duty to bargain began in May. Accordingly, Adams-Mondock acted at her own peril by not scheduling bargaining dates with the Union.

The obligation to bargain encompasses the affirmative duty to make expeditious and prompt arrangements, within reason, for meeting and conferring. *JH Reuter-Rex Mfg. Co.*, 86 NLRB 470, 506 (1949); and *Lancaster Nissan, Inc.*, 344 NLRB 225, 227 (2005). The Board has found that an employer violates the Act by delaying bargaining for three months for poorly explained reasons. *In re Fruehauf Trailer Services, Inc.* 335 NLRB 393, 393 (2001). In the instant case, Respondent's excuse for delaying to bargain is likewise poorly explained.

H. Respondent Unlawfully Conditioned Bargaining on the Withdrawal of an Unfair Labor Practice Charge. (Cross Exception #13)

The ALJ's finding that Respondent did not violate Section 8(a)(5) by conditioning bargaining on the withdrawal of an unfair labor practice charge is clear error. The ALJ described Respondent's proposal to withdraw its unfair labor practice charge as non-mandatory subject of bargaining, citing *Carlson Porsche Audi, Inc.*, 266 NLRB 141 ,

149-150 (1983) and *Patrick & Company*, 248 NLRB 390, 393, fn. 5 (1980). The ALJ reasoned that because Respondent did not insist to impasse on its proposal, then it did not violate Section 8(a)(5). (JD 30/ 11-13, JD/30/ 23-25).

The ALJ's analysis contravenes public policy. As an initial matter, Respondent admits that as of October 1, 2012, the date when Respondent's attorney Walther sent Devore the email demanding that she withdraw the charge, it was under an obligation to bargain with the Union. Accordingly, it should have promptly performed its duty to bargain as such, without placing any conditions on the union. Secondly, the ALJ found that Respondent unreasonably delayed from August 17 until October 15, 2012 with respect to agreeing to bargain with the Union. (JD 29/38-40) This finding is at odds with the ALJ's finding that the Respondent was justified in further delaying bargaining by conditioning it upon the withdrawal of an unfair labor practice.

Further, the cases the ALJ cites for his legal analysis are distinguishable. In *Carlson Porsche Audi, Inc.*, supra, the Board found that the an employer did not violate the Act by proposing that the union withdraw an unfair labor practice charge filed against it during, during collective bargaining negotiations. The parties were in the process of finalizing a collective bargaining agreement, and the employer wanted to resolve all issues. *Id.* at 149-150. In the instant case, the parties had not even begun to negotiate, so there could be no intent by Respondent to resolve all outstanding issues. Instead, Respondent was obviously conditioning bargaining upon the withdrawal of an unfair labor practice charge.

In *Patrick & Company*, supra, Board found that an employer insisted to impasse on the withdrawal of an unfair labor practice charge, and thus committed a violation.


Patrick & Company, supra, at 393. To the extent the legal analysis in *Patrick & Company's* is even relevant to the facts in this case, it supports the General Counsel's position that an insistence upon the withdrawal of a charge is illegal.

The Board's policy is to allow employees, individuals, and employers to bring concerns to it for resolution. Any infringement upon that employee's statutory right to bring their concerns to the Board conflicts with the Board's public policy. Moreover, the Board has held that an employer violates the Act by conditioning the start of negotiations on the withdrawal of unfair labor practice charges. For instance, in *United Brotherhood of Carpenters*, 195 NLRB 799, 806 (1972), the Board found that an employer committed a 8(a)(1) violation by refusing to arrange bargaining dates unless the union agreed to withdraw unfair labor practice charges. Furthermore, in *Caribe Staple, Co.*, 313 NLRB 877, 892 (1994), the Board found that an employer violated Section 8(a)(5) of the Act by requiring the union to withdraw an unfair labor practice charge, stating that requirement "constituted a serious threat to the process." *Id.* at 893.

For the above stated reasons, the ALJ erred in finding that Respondent did not unlawfully condition bargaining upon the withdrawal of the Union's unfair labor practice charge.

IV. CONCLUSION

For the above reasons, the General Counsel respectfully requests that Board reverse certain findings of the ALJ as described in the General Counsel's cross exceptions and this accompanying brief. Specifically, the General Counsel requests the Board find that Respondent violated Section 8(a)(1) and (5) as described in the Complaint as amended and award an appropriate remedy.



Jennifer Y. Brazeal
Counsel for the General Counsel
National Labor Relations Board,
Region Seven
477 Michigan Avenue, Detroit, MI
48226

Dated at Detroit, Michigan, this 10th day of March 2014

PROPOSED NOTICE

We are posting this Notice to inform you of your rights guaranteed by the National Labor Relations Act.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union

Choose a representative to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

We assure our employees that:

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT refuse to bargain collectively and in good faith with Local 9036, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO (the Union) as the exclusive collective bargaining representative of the following appropriate Unit (Unit):

All full time and regular part time drivers and bus assistants employed by the Saginaw School District, but excluding substitute and temporary drivers and bus assistants, dispatchers, supervisors, confidential employees, and all other employees

WE WILL NOT unilaterally implement changes to the wages, hours and other working conditions of the Unit employees, including, but not limited to wage rates, hours of work, seniority, wages for pre- and post-trip time, health, dental and vision insurance benefits, bereavement pay, holiday pay, sick days, personal business day, elimination of union dues checkoff, life, accidental death and dismemberment insurance, employee work rules regarding personal conduct, rules and regulations for operating school buses, vacation time, performance awards, employee discount program, driver performance standards and performance reviews.

WE WILL NOT implement a new employee attendance policy, without affording the Union an opportunity to bargain with respect to these terms and conditions of employment.

WE WILL NOT bypass the Union and deal directly with our employees in the Unit by informing said employees of the terms and conditions of employment they would be subject to as a result of being employed by us.

WE WILL NOT insist as a condition of meeting and engaging in collective bargaining with the Union, that the Union withdraw unfair labor practice charges filed against us.

WE WILL NOT unreasonably delay meeting with the Union to engage in collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the Union as the exclusive collective bargaining agreement of the Unit.

WE WILL rescind all changes we made to unit employees terms and conditions of employment, and advise employees in writing of such rescission, return to the *status quo ante* in such matters if so requested by the Union, and make whole those employees who suffered any financial losses as a result of the unlawful changes, with interest computed in accord with Board policy.

WE WILL upon request, bargain collectively and in good faith with the Union as the exclusive collective bargaining representative of the Unit over proposed changes to terms and conditions of employment.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the General Counsel's Cross-Exceptions to the Decision of the Administrative Law Judge and Supporting Brief were served on the 10th day of March 2014 on the following parties:

E-File:

Executive Secretary
National Labor Relations Board

By Email:

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A handwritten signature in black ink, appearing to read 'Jennifer Y. Brazeal', is written over a horizontal line.

Jennifer Y. Brazeal
Counsel for the General Counsel

TAB 11



United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570
www.nlrb.gov

HAND-DELIVERED

Date: May 23, 2016

To: The National Labor Relations Board

Re: First Student, Inc., a Division of First Group America, Case 07-CA-092212

Attached please find a Notice of Ratification regarding the above-cited case and the Affidavit of Service establishing that all parties were served with the Notice and this letter. I request that the Notice of Ratification be placed in the case record.

Regards,

/s/ Richard F. Griffin, Jr.

General Counsel

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**FIRST STUDENT, INC., A DIVISION OF FIRST
GROUP AMERICA**

and

Case 07-CA-092212

**LOCAL 9036, UNITED STEEL PAPER AND
FORESTRY, RUBBER MANUFACTURING,
ENERGY, ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION (USW),
AFL-CIO**

NOTICE OF RATIFICATION

The prosecution of this case commenced under the authority of Acting General Counsel Lafe E. Solomon during the period after his nomination on January 5, 2011, while his nomination was pending with the Senate, and before my confirmation on November 4, 2013.

The United States Court of Appeals for District of Columbia Circuit recently held that Acting General Counsel Solomon's authority under the Federal Vacancies Reform Act (FVRA), 5 U.S.C. §§ 3345 et seq., ceased on January 5, 2011, when the President nominated Mr. Solomon for the position of General Counsel. *SW General, Inc. v. NLRB*, __ F.3d __, 2015 WL 4666487, (D.C. Cir., Aug. 7, 2015). The Court found that complaints issued while Mr. Solomon's nomination was pending were unauthorized and that it was uncertain whether a lawfully-serving General Counsel or Acting General Counsel would have exercised discretion to prosecute the cases. *Id.* at *10.

I was confirmed as General Counsel on November 4, 2013. After appropriate review and consultation with my staff, I have decided that the issuance of the complaint in this case and its continued prosecution are a proper exercise of the General Counsel's broad and unreviewable discretion under Section 3(d) of the Act.

My action does not reflect an agreement with the appellate court ruling in *SW General*. Rather, my decision is a practical response aimed at facilitating the timely resolution of the charges that I have found to be meritorious while the issues raised by *SW General* are being resolved. Congress provided the option of ratification by expressly exempting "the General Counsel of the National Labor Relations Board" from the FVRA provisions that would otherwise

preclude the ratification of certain actions of other persons found to have served in violation of the FVRA. Id. at *9 (citing 5 U.S.C. § 3348(e)(1)). .

For the foregoing reasons, I hereby ratify the issuance and continued prosecution of the complaint.

Date: May 23, 2016

/s/ Richard F. Griffin, Jr.

Richard F. Griffin, Jr.
General Counsel

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7**

**FIRST STUDENT, INC., A DIVISION OF FIRST
GROUP AMERICA**

Case 07-CA-092212

and

**LOCAL 9036, UNITED STEEL PAPER AND
FORESTRY, RUBBER MANUFACTURING,
ENERGY, ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION (USW),
AFL-CIO**

**AFFIDAVIT OF SERVICE OF: Notice of Ratification of Complaint and Prosecution of
Complaint and Letter to the Board regarding this Ratification.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on May 23, 2016 I served the above-entitled document(s) by regular mail, as noted below, upon the following persons, addressed to them at the following addresses:

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TONYA DEVORE, District 2 Staff
Representative
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AND FORESTRY, RUBBER
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INDUSTRIAL AND SERVICE
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(USW), AFL-CIO
12687 GOLDENROD CT
WAYLAND, MI 49348-9236

May 23, 2016

Date

Crystal Roberts
Designated Agent of NLRB

Name

/s/ Crystal Roberts

Signature

TAB 12

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FIRST STUDENT, INC., A
DIVISION OF FIRST GROUP
AMERICA,

Petitioner,

v.

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

Case No.18-1047

UNDERLYING DECISION FROM WHICH PETITION ARISES

Pursuant to the Court's Order of February 22, 2012, Petitioner First Student, Inc. has attached hereto a copy of the underlying Decision and Order of Respondent National Labor Relations Board from which First Student's Petition for Review arises.

Dated: March 26, 2018

Respectfully submitted,

/s/ David A. Kadela

David A. Kadela (D.C. Cir. No. 53959)

LITTLER MENDELSON, P.C.

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*Attorney for Petitioner
First Student, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of March 2018, the foregoing was served on all parties or their counsel of record through the CM/ECF system if they are registered users, or, if they are not, by serving a true and correct copy at the addresses listed below, via United States Mail:

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/s/ David A. Kadela

David A. Kadela

*Attorney for Petitioner
First Student, Inc.*

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

First Student Inc., A Division of First Group America and Local 9036, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) AFL-CIO. Case 07-CA-092212

February 6, 2018

DECISION AND ORDER

BY CHAIRMAN KAPLAN AND MEMBERS PEARCE
AND MCFERRAN

On December 13, 2013, Administrative Law Judge Mark Carissimi issued the attached decision. The Respondent filed exceptions and a brief in support, the General Counsel and the Charging Party filed answering briefs, and the Respondent filed reply briefs. The General Counsel also filed cross-exceptions and a brief in support, and the Respondent filed an answering brief. Finally, the Charging Party filed exceptions and a brief in support, the Respondent filed an answering brief, and the Charging Party filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions only to the extent consistent with this Decision and Order, to amend his remedy, and to adopt the recommended Order as modified and set forth in full below.²

The Respondent admits that it is a legal successor to the Saginaw School District (School District) and, as such, obligated to recognize and bargain with the incumbent bargaining representative of a unit of bus drivers and monitors, a majority of whom formerly worked for the School District. For the reasons stated fully in the judge's decision, we affirm his findings that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally implementing a new attendance policy in

August and September 2012 and by delaying bargaining from August 17 to October 17, 2012.³ For the reasons set forth below, however, we find, contrary to the judge, that the Respondent was a "perfectly clear" successor employer and that it violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with notice and an opportunity to bargain before imposing initial terms and conditions of employment for the unit employees.

I. FACTS

Until 2012, the School District directly employed drivers and assistants to perform school bus transportation services. They were represented by the United Steel Workers International Union (USW) and Local 8410.⁴ The most recent collective-bargaining agreement covering the School District's bus drivers was effective from August 27, 2010, through August 31, 2012.

In response to the School District's request for proposals for subcontracting out school bus transportation work for the 2012–2013 school year,⁵ the Respondent

³ Unlike the judge, we also find an independent 8(a)(5) violation for the Respondent's act of conditioning the commencement of bargaining on the Union's agreement to withdraw the unfair labor practice charge filed on September 21, 2012, alleging a refusal to recognize and bargain. The record clearly establishes, and the judge found, that the Respondent made this unlawful proposal on October 1, stating that if the Union did not withdraw the charge the Respondent would not be able to begin negotiations until the Board concluded its investigation. The Respondent reiterated its position on October 3. At this point, the Respondent had already unlawfully delayed bargaining from August 17. On October 5, the Respondent withdrew its withdrawal demand and agreed to begin negotiations on October 15. The judge, however, declined to find a separate violation for this conduct because "the Respondent raised the issue only briefly [and] did not insist to impasse on it" The issue here, however, is not whether a party may propose the withdrawal of an unfair labor practice during ongoing collective-bargaining negotiations. It is whether a party may condition the commencement of negotiations on a withdrawal. On this point, Board law is clear that "an employer may not condition bargaining on the withdrawal of unfair labor practice charges or other litigation." *Caribe Staple Co.*, 313 NLRB 877, 890 (1994); *United Brotherhood of Carpenters*, 195 NLRB 799, 806 (1972). Accordingly, we find that the Respondent's withdrawal precondition, even though it was maintained for only a few days, constituted a separate violation.

⁴ In exceptions, the Respondent challenges the judge's findings that the USW and Local 8410 were the joint representatives of the unit employees from at least August 27, 2010, to June 5, 2013, and that the USW and Local 9036 were the joint representatives of the unit employees from June 5, 2013, to the present. For the reasons set forth in the judge's decision, we find no merit in the Respondent's challenges. We will refer to the USW and Local 8410 and the USW and Local 9036 collectively as "the Union" herein. We find no merit to the Respondent's exception to the judge's grant of the General Counsel's motions to amend the complaint to correct the references to the unions, or its exception to the judge's decision not to dismiss the complaint on Sec. 10(b) grounds, for the reasons stated by the judge.

⁵ The judge's decision details, and then references, the School District's initial request for subcontracting proposals for the 2011–2012 school year and the Respondent's communications related thereto. We

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² In accordance with our decision in *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), we shall include the requisite tax compensation and Social Security reporting remedy, and shall modify the judge's recommended Order and substitute a new notice to reflect this remedial change and to conform to the violations found and the Board's standard remedial language.

submitted a bid proposal on February 3, 2012.⁶ Thereafter, the School District entered into negotiations with the Respondent for the transportation services contract. While those negotiations were pending, the School District arranged for a meeting between representatives of the Respondent and School District unit employees. Approximately 40 unit employees attended the meeting, which took place on March 2.

At this meeting, the Respondent's area general manager Douglas Meek told the unit employees that, if the Respondent and the School District agreed to a contract, the Respondent would offer employment to current employees who submitted an application and met the Respondent's hiring criteria, which included a background check, physical examination, drug screen, and training. The record establishes that these requirements were consistent with the School District's hiring criteria and the general eligibility requirements for bus drivers in the industry. In response to a question regarding how many current employees would be hired, Meek stated that the Respondent typically hires 80 to 90 percent of an existing workforce when it assumes operations. Meeks further stated that if the workforce is represented and the Respondent hires 51 percent of the employees, it will recognize the union and negotiate a new contract. When asked about guaranteed hours for employees, Meek responded that the Respondent would use the School District's routing system and would not be able to provide information regarding hours until the routes were established. He also indicated that other terms and conditions of employment would be subject to negotiations.

In early May, the School District and the Respondent reached agreement on the terms of a transportation services contract. Thereafter, at a public meeting held on May 16, the Board of Education took up the issue of whether to approve the contract. USW representative Tonya DeVore and at least five unit employees attended the meeting, at which Daniel Kinsley, the Respondent's development manager, answered questions from the Board. Kinsley stated that the Respondent would hire the current School District employees if they submitted applications and met the Respondent's hiring criteria, which included a background check, a drug screen, an interview, and dexterity tests. He indicated that the Respondent would hire the applicants at the same rate of pay they had been receiving from the School District and that, if 51 percent or more of the existing workforce was hired, the Respondent would recognize the Union. The

Board voted to approve the contract between the Respondent and the School District.

Immediately following the meeting, Kinsley spoke with union representative DeVore and several unit employees, clarifying that the Respondent would recognize the Union if it hired 50 percent "plus one" of the existing School District employees. Kinsley also stated that the Respondent's goal was to hire as many of the existing employees as possible who met the hiring criteria, and that the Respondent would maintain the existing wages.

On May 17, almost all of the School District's unit employees attended a meeting with several representatives of the Respondent. At the meeting, Meek briefly discussed the Respondent's operation and management structure. Thereafter, the Respondent distributed a memo to the School District employees, inviting them to apply for employment. The memo stated that "[a]ll current Saginaw Public School drivers and monitors who successfully pass the [Respondent's] hiring criteria will be offered an employment opportunity with First Student." The memo also set forth several terms and conditions of employment that were different from the employment terms set forth in the School District collective-bargaining agreement under which the unit employees had worked. For example, the memo stated that employees would retain the same pay for transportation duties but would receive a lower rate for other duties, such as training and clerical work. Under the collective-bargaining agreement, employees had received the same hourly wage rate for all work performed. Similarly, the memo set forth a lower number of guaranteed hours than had been in place under the collective-bargaining agreement and provided a different method for paying employees for participating in training.

II. DISCUSSION

In *NLRB v. Burns International Security Services, Inc.*, 406 U.S. 272, 281–295 (1972), the Supreme Court held that a successor is not bound by the substantive terms of a collective-bargaining agreement negotiated by the predecessor and is ordinarily free to set initial terms of employment unilaterally. However, it recognized that "there will be instances in which it is perfectly clear that the new employer plans to retain all of the employees in the unit," and in those circumstances, the successor is required to "initially consult with the employees' bargaining representative before he fixes terms." *Id.* at 294–295. In *Spruce Up Corp.*, 209 NLRB 194 (1974), *enfd. mem.* 529 F.2d 516 (4th Cir. 1975), the Board considered the scope of the *Burns* "perfectly clear" successor exception and held that it "should be restricted to circumstances in which the new employer has either actively or, by tacit inference, misled employees into believing they

find it unnecessary to rely on the judge's analysis of the parties' communications relating to that initial request for proposals, which the School District ultimately withdrew.

⁶ All dates hereafter will refer to 2012, unless otherwise noted.

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would all be retained without change in their wages, hours, or conditions of employment, or at least to circumstances where the new employer . . . has failed to clearly announce its intent to establish a new set of conditions prior to inviting former employees to accept employment.” Id. at 195 (footnote omitted).

In *Nexeo Solutions, LLC*, 364 NLRB No. 44 (2016), the Board recently reviewed cases subsequent to *Spruce Up* that more specifically defined the parameters of the “perfectly clear” exception with respect to the timing and clarity of the announcement of new terms of employment. The *Nexeo* decision explains that, in those cases,

the Board clarified that the exception is not limited to situations where the successor fails to announce initial terms before extending a formal invitation to the predecessor’s employees to accept employment. Rather, the bargaining obligation attaches when a successor expresses an intent to retain the predecessor’s employees without making it clear that employment will be conditioned on acceptance of new terms. *Canteen Co.*, 317 NLRB 1052, 1053–1054 (1995) [enfd. 103 F.3d 1355 (7th Cir. 1997)]. To avoid “perfectly clear” successor status, a new employer must clearly announce its intent to establish a new set of conditions prior to, or simultaneously with, its expression of intent to retain the predecessor’s employees. *Spruce Up*, 209 NLRB at 195; *Canteen*, 317 NLRB at 1052–1054.

Nexeo, 364 NLRB No. 44, slip op. at 5–6 (footnote omitted).⁷ Applying this established law, we find, contrary to the judge, that the Respondent was a “perfectly clear” successor to the School District and, therefore, violated the Act by unilaterally changing unit employees’ terms and conditions of employment without first bargaining with the Union.

From the very beginning of the transition process, well before the formal hiring process began, the Respondent clearly and consistently communicated its intent to retain the School District’s unit employees. At the March 2 meeting, the Respondent stated that it would offer employment to all existing employees who completed applications and met its hiring criteria which, the record

establishes, are consistent with the School District’s hiring criteria and industry-wide standards.⁸ The Respondent underscored this intent by informing the employees that it typically hired “80 to 90 percent” of an existing workforce when taking over transportation duties from another employer. The Respondent also stated that it planned to recognize the employees’ existing union representative, so long as “51 percent” of the existing workforce was hired by the Respondent. Thereafter, in comments during and following the May 16 Board of Education meeting, the Respondent reaffirmed its intention to retain the unit employees and further stated that it would be maintaining their existing wages.

Having established that the Respondent first expressed its intent to retain employees on March 2, the next question is whether the Respondent “clearly announc[ed] its intent to establish a new set of conditions” prior to or simultaneously with its expression of intent to retain the unit employees. Contrary to the judge, we find that it did not. In reaching his conclusion, the judge misinterpreted the import of statements made at the March 2 meeting that matters such as paid time off, vacation pay, and sick pay “would be subject to negotiations.” In the judge’s view, this statement indicated “that the Respondent would not be adopting the School District’s collective-bargaining agreement and that new working conditions would be implemented.” The problem with this reasoning is that it is based on an incorrect premise. Even “perfectly clear” successors are not required as a legal matter to adopt their predecessor employer’s collective-bargaining agreement. Rather, their statutory bargaining obligation is only to maintain the status quo conditions of employment under the predecessor until it bargains to agreement or impasse with the representative union over terms of a new collective-bargaining contract for the successor workforce. Therefore, a successor’s announcement that it will not be adopting the predecessor’s bargaining agreement and that certain terms of employment would be subject to negotiations conveys nothing more than a statement of law—that the status quo may change as a result of negotiations, but not in advance of them.⁹

⁸ Because these employees had all been hired under similar industry standards by the School District, it follows that the employees had no reason to doubt that they would be hired by the Respondent.

⁹ See *Road & Rail Services*, 348 NLRB 1160, 1162 (2006). In *Road & Rail*, the Board found that the respondent was a “perfectly clear” successor and that it therefore did not violate Sec. 8(a)(2) and (3) of the Act by recognizing and entering into negotiations with the union that represented its predecessor’s employees before hiring its work force and commencing operations. Id. The Board rejected the argument that it was not clear that the union would have majority status in the new work force because the respondent informed the union that it desired to negotiate different terms and conditions of employment simultaneously with its expression of intent to retain the predecessor’s employees. Id.

⁷ See also *Creative Vision Resources, LLC*, 364 NLRB No. 91, slip op. at 2–3, enfd. 872 F.3d 274 (5th Cir. 2017); *Adams & Associates, Inc.*, 363 NLRB No. 193, slip op. at 3 (2016), enfd. 871 F.3d 358, 373 fn. 6 (5th Cir. 2017); *Elf Atochem North America, Inc.*, 339 NLRB 796, 807 (2003); *DuPont Dow Elastomers LLC*, 332 NLRB 1071, 1074 (2000), enfd. 296 F.3d 495 (6th Cir. 2002); *Helnick Corp.*, 301 NLRB 128, 128 fn. 1 (1991); *Fremont Ford Sales*, 289 NLRB 1290, 1297 (1988); *C.M.E., Inc.*, 225 NLRB 514, 514–515 (1976); *Roman Catholic Diocese of Brooklyn*, 222 NLRB 1052, 1055 (1976), enf. denied in relevant part sub nom. *Nazareth Regional High School v. NLRB*, 549 F.2d 873 (2d Cir. 1977).

The judge also erred in finding that the Respondent's statements about the employees' hours and routes at the March 2 meeting were sufficiently clear to put them on notice that there would be changes in the initial terms and conditions of their employment. Specifically, the Respondent stated that it did not know how many hours would be guaranteed the employees because employee hours would depend on the routes established by the School District's routing system. This assertion does not constitute an affirmative statement that terms and conditions will be changed; rather, the Respondent merely indicated that it would continue to use the School District routing system (presumably the same system that had been in place when the School District employed the unit employees) but did not have information regarding routes at that time. The statement was therefore not sufficient to fulfill the obligation, under *Spruce Up*, that a new employer clearly announce its intention to establish new conditions.¹⁰

at 1162–1163. Contrary to the judge, *Road & Rail* is not distinguishable on the grounds that it “did not involve the issue of whether the employees’ continued employment was contingent on their acceptance of a successor’s unilateral implementation of the initial conditions of employment.” The Board directly addressed the question that is before the Board in this case—whether a successor’s expression of intent to negotiate new terms and conditions of employment with the representative union renders the “perfectly clear” caveat inapplicable.

¹⁰ See *Creative Vision Resources*, supra, 364 NLRB No. 91, slip op. at 4, fn. 12 (explaining that “to avoid ‘perfectly clear’ successor status, a new employer must ‘clearly announce its intent to establish a new set of conditions’” and “[a]lthough the announcement need not be made in any particular form, it must be sufficiently clear that a reasonable employee in like circumstances would understand that continued employment is conditioned on acceptance of materially different terms from those in place under the predecessor”). See also *Nexeo*, supra, 364 NLRB No. 44, slip op. at 7, 9, 11–12 fn. 33 (successor’s statements that it would provide “equivalent salaries and benefits comparable in the aggregate” to those provided by the predecessor and that it was “working hard to flesh out final plans for our new company’s compensation and benefits program” were not sufficiently clear or definite to put employees on notice of new terms); *Elf Atochem*, supra, 339 NLRB at 796, 808 (successor’s statement that it would provide “equivalent salaries and comparable benefits” to those provided by the predecessor did not signal a material change in terms and conditions of employment).

Contrary to the judge’s finding, *Banknote Corp. of America*, 315 NLRB 1041, 1043 (1994), enf’d. 84 F.3d 637 (2d Cir. 1996), cert. denied 519 U.S. 1109 (1997), does not support a different result. In that case, the Board found that the new employer was not a “perfectly clear” successor because “simultaneous with its stated intention to retain the predecessor’s employees, the Respondent announced new terms and conditions of employment.” See also *Planned Building Services*, 318 NLRB 1049 (1995) (“perfectly clear” successor not established where “during its very first contact with [the predecessor’s] employees,” the employer made clear that its offer to retain the employees was “based on changed terms and conditions of employment”). No such simultaneous announcement was made in the instant case. We further note that, contrary to the Respondent’s exceptions, *Fremont Ford*, supra, 289 NLRB 1290, supports, rather than contradicts, our holding. In that case, the employer was found to be a “perfectly clear” successor at the

We further find that the judge misapplied well-established precedent in finding that the Respondent’s subsequent announcement of new initial terms and conditions of employment on May 17 was a timely exercise of the *Burns* successor’s right to unilaterally establish initial terms and conditions of employment. The Board has consistently held that a subsequent announcement of new terms, even if made before formal offers of employment are extended, or before the successor commences operations, will not vitiate the bargaining obligation that is triggered when a successor expresses an intent to retain the predecessor’s employees without making it clear that their employment is conditioned on the acceptance of new terms.¹¹

Our dissenting colleague’s more restrictive interpretation of the “perfectly clear” caveat is inconsistent with the express language of the Supreme Court in *Burns*. Moreover, it does not take into account the significant reliance employees may place on statements of intent to hire, to the exclusion of other employment opportunities. Holding a successor to its initial statements of intent, even when those statements are made before formal offers of employment are extended or the transfer of ownership or operations is complete, prevents prospective employers from inducing such reliance, only later to reveal that the employees’ terms of employment will be changed.¹² It also serves the important statutory policy of fostering industrial peace in what the Supreme Court has recognized may be an unsettling transition period for unions and employees alike. See *Fall River Dyeing & Finishing Corp.*, 482 U.S. 27, 39–40 (1987).¹³

time when it first indicated that it intended to retain the predecessor’s employees, which is consistent with our holding here.

¹¹ See *Creative Vision*, supra, 364 NLRB No. 91, slip op. at 3 and cases cited at fn. 10.

¹² *Nexeo*, supra, 364 NLRB No. 44, slip op. at 9, citing *S & F Market Street Healthcare LLC v. NLRB*, 570 F.3d 354, 359 (D.C. Cir. 2009); *International Assn. of Machinists and Aerospace Workers, AFL–CIO v. NLRB*, 595 F.2d 664, 674–675 (D.C. Cir. 1978), cert. denied 439 U.S. 1070 (1979). The Fifth, Sixth, and Seventh Circuit have also approved this reasoning. *Creative Vision*, supra, 364 NLRB No. 91, slip op. at 283; *DuPont Dow Elastomers*, supra, 296 F.3d at 506; *Canteen*, supra, 103 F.3d at 1364.

¹³ Contrary to the Respondent’s argument in its answering brief, there is no impediment to holding that the Respondent’s bargaining obligation attached on March 2, notwithstanding that the transportation services contract between the Respondent and the School District was not approved until months later. See *Nexeo*, supra, 364 NLRB No. 44 (finding “perfectly clear” successor based on purchase agreement and statements evincing intent to employ existing workforce made 5 months before sale was consummated); *Elf Atochem*, supra, 339 NLRB 796 (finding “perfectly clear” successor status based on letter of intent to purchase predecessor and statements promising to employ existing work force made 4 months before sale was consummated); *Spitzer Akron, Inc. v. NLRB*, 540 F.2d 841, 843–845 (6th Cir. 1976) (finding that it was “perfectly clear” in early August that the successor intended to rehire a sufficient number of employees to maintain the union’s

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For the reasons set forth above, we find that the General Counsel has met his burden of proving that the Respondent became a “perfectly clear” successor, with an obligation to bargain over initial terms, on March 2, when it first expressed an intent to retain the predecessor’s employees without clearly announcing an intent to establish different initial terms of employment. The Respondent therefore violated Section 8(a)(5) and (1) of the Act by announcing and implementing unilateral changes in the unit employees’ terms and conditions of employment on and after May 17, 2012.

AMENDED CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. At least from August 27, 2010, to June 5, 2013, the United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL–CIO and Local 8410, the United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL–CIO was the exclusive bargaining representative of the following appropriate unit:

All full-time and regular part-time drivers and monitors employed by First Student Inc., a Division of First Group America at its Saginaw, Michigan location, but excluding substitutes and temporary drivers and monitors, dispatchers, confidential employees and supervisors as defined in the Act.

3. Since June 5, 2013, the United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL–CIO and Local 9036, the United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL–CIO (the Union) has been the exclusive representative of the employees in the above-described appropriate unit, for the purposes of collective bargaining with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment.

majority status, even though the purchase of assets was not consummated until September; in those circumstances, moreover, “a duty to bargain . . . preceded the formal rehiring” of employees), enfg. 219 NLRB 20 (1975).

Even assuming, moreover, that no bargaining obligation could arise until after the Respondent’s contract was approved, we would find that the Respondent became a “perfectly clear” successor on May 16, when it reiterated its previously expressed intent to retain the predecessor’s employees without simultaneously clearly announcing an intent to establish different initial terms of employment. See, e.g., *Elf Atochem North America*, supra, 339 NLRB at 796; *Canteen*, supra, 317 NLRB at 1052–1053.

4. The Respondent, a “perfectly clear” successor employer to the Saginaw School District, violated Section 8(a)(5) and (1) of the Act on May 17, 2012, by unilaterally changing the terms and conditions of initial employment for bargaining unit employees, including their rate of pay and guaranteed hours, without first notifying the Union and giving it an opportunity to bargain.

5. By unilaterally implementing attendance policies on August 27, 2012, and September 4, 2012, without first notifying the Union and giving it an opportunity to bargain, the Respondent violated Section 8(a)(5) and (1) of the Act.

6. By conditioning bargaining on the Union’s withdrawal of an unfair labor practice charge, the Respondent violated Section 8(a)(5) and (1) of the Act.

7. By delaying bargaining from August 17, 2012 to October 17, 2012, the Respondent violated Section 8(a)(5) and (1) of the Act.

8. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

AMENDED REMEDY

We amend the judge’s proposed remedy to address the additional Section 8(a)(5) and (1) violations that we have found. Having found that the Respondent is a “perfectly clear” successor to the School District and that it violated Section 8(a)(5) and (1) of the Act by failing to bargain with the Union to agreement or impasse prior to changing existing terms and conditions of employment for the unit employees, we shall require the Respondent, on request by the Union, to retroactively restore the terms and conditions of employment established by its predecessor and rescind the unilateral changes it has made. The Respondent shall also be required to make employees whole for any loss of wages or other benefits they suffered as a result of the Respondent’s unilateral changes in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In addition, we shall order the Respondent to remit all payments it owes to employee benefit funds, including any additional amounts due the funds on behalf of the unit employees in accordance with *Merryweather Optical Co.*, 240 NLRB 1213 (1979). Further, the Respondent shall be required to reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons*, supra, com-

pounded daily as prescribed in *Kentucky River Medical Center*, supra.

Finally, the Respondent shall be required to compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

ORDER

The National Labor Relations Board orders that the Respondent, First Student, Inc., A Division of First Group America, Saginaw, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO and Local 8410, USW, AFL-CIO, and with the USW and Local 9036, USW, AFL-CIO (altogether, the Union), in the following appropriate unit, by changing the terms and conditions of employment of unit employees, including their rate of pay and guaranteed hours, benefits, and attendance policies, without first providing notice to and bargaining in good faith with the Union to agreement or to impasse. The bargaining unit is:

All full-time and regular part-time drivers and monitors employed by First Student Inc., a Division of First Group America at its Saginaw, Michigan location, but excluding substitutes and temporary drivers and monitors, dispatchers, confidential employees and supervisors as defined in the Act.

(b) Conditioning bargaining on the Union's withdrawal of an unfair labor practice charge.

(c) Delaying the commencement of bargaining with the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Before implementing any changes in the bargaining unit employees' wages, hours, or other terms and conditions of employment, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the bargaining unit described above.

(b) To the extent it has not already done so, on request by the Union, rescind any changes in the terms and conditions of employment for the unit employees that were unlawfully unilaterally implemented on and after May 17, 2012, including but not limited to the changes to unit employees' rates of pay, guaranteed hours, benefits, and attendance requirements.

(c) Make the unit employees whole, with interest, for any losses sustained as a result of the unilateral changes in terms and conditions of employment in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(d) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Saginaw, Michigan, facility copies of the attached notice marked "Appendix."¹⁴ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in this proceeding, the Respondent shall duplicate and mail, at its

¹⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 17, 2012.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 6, 2018

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

CHAIRMAN KAPLAN, dissenting in part.

Contrary to my colleagues, I would affirm the judge's finding that Respondent First Student Inc. was *not* a "perfectly clear" successor to the Saginaw, Michigan School District (School District), its predecessor. As the judge found, the Respondent gave the School District's employees notice of different initial employment terms on May 17, 2012, which was more than a month before the Respondent extended employment offers to the School District's employees. Therefore, under the standards set forth in *Spruce Up Corp.*, 209 NLRB 194 (1974), enfd. 529 F.2d 516 (4th Cir. 1975), the Respondent had the right under *Burns* to implement initial employment terms without consulting or bargaining with the predecessor's union. Accordingly, although I agree with other aspects of my colleagues' decision,¹ I respectfully dissent from their finding that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (NLRA or Act) by unilaterally implementing initial employment terms that differed from the employment terms of its predecessor.

Further, to the extent that my colleagues' analysis in this case relies on *Creative Vision Resources, LLC*, 364 NLRB No. 91 (2016), enfd. 872 F.3d 274 (5th Circ.

¹ The facts regarding the Union's requests to bargain and the Respondent's delayed response to those requests are recounted in full in the judge's decision and more briefly in my colleagues' opinion. I agree with my colleagues and the judge that, once it was obligated to bargain, the Respondent violated the Act by delaying the commencement of negotiations. I also agree with my colleagues that the Respondent violated the Act by conditioning the commencement of negotiations on the Union's withdrawal of an unfair labor practice charge and by unilaterally implementing, and unilaterally revising, an attendance policy.

2017), *Nexeo Solutions, LLC*, 364 NLRB No. 44 (2016), and *Canteen Co.*, 317 NLRB 1052 (1995), enfd. 103 F.3d 1355 (7th Cir. 1997), and the interpretations of *Spruce Up* articulated therein, I note that I do not believe that those cases were correctly decided. Specifically, I do not agree that "perfectly clear" successorship attaches if and when "a successor *expresses an intent* to retain the predecessor's employees without making it clear that employment will be conditioned on the acceptance of new terms." *Nexeo*, 364 NLRB No. 44, slip op. at 6 (citing *Canteen Co.*, 317 NLRB at 1053–1054) (emphasis added). The "expresses an intent" standard cannot be reconciled with the principles of successorship set forth in *Burns*,² *Fall River Dyeing*,³ and their progeny. However, in the absence of a Board majority to overrule *Nexeo*, *Canteen*, and *Creative Vision*, I agree for institutional purposes that that precedent is applicable here.

Dated, Washington, D.C. February 6, 2018

Marvin E. Kaplan, Chairman

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain in good faith with the United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO and Local 8410, USW, AFL-CIO, and with the USW and Local 9036, USW, AFL-CIO (altogether, the Union) in the following

² *NLRB v. Burns International Security Services*, 406 U.S. 272 (1974).

³ *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27 (1987).

appropriate unit by unilaterally changing your terms and conditions of employment, including but not limited to changes to your wages, your guaranteed hours, benefits, and attendance policies, without first providing the Union with notice and an opportunity to bargain. The bargaining unit is:

All full-time and regular part-time drivers and monitors employed by First Student Inc., a Division of First Group America at its Saginaw, Michigan location, but excluding substitutes and temporary drivers and monitors, dispatchers, confidential employees and supervisors as defined in the Act.

WE WILL NOT condition bargaining on the Union's withdrawal of an unfair labor practice charge.

WE WILL NOT delay the commencement of bargaining with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of your employment, notify, and on request, bargain with the Union as your exclusive collective-bargaining representative.

WE WILL, to the extent we have not already done so, on request by the Union, rescind any changes in the terms and conditions of employment for the unit employees that we unlawfully unilaterally implemented on and after May 17, 2012, including, but not limited to, the changes to our unit employees' rates of pay, guaranteed hours, benefits, and attendance requirements.

WE WILL make our unit employees whole for any losses they sustained due to the unlawfully imposed changes to their terms and conditions of employment, with interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

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The Board's decision can be found at www.nlrb.gov/case/07-CA-092212 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington DC 20570, or by calling (202) 273-1940.



Jennifer Brazeal, Esq. for the General Counsel.

David Kadela and Erik Hult, Esqs. for the Respondent.

Emma Rebhorn and Stuart Israel, Esqs. for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARK CARISSIMI, Administrative Law Judge. This case was tried in Saginaw, Michigan, on July 24–26, 2013. Local 9036, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) AFL–CIO (Local 9036), filed the charge on October 29, 2012, and the Acting General Counsel issued the complaint on April 30, 2013.

On the entire record, including my observation of the demeanor of the witnesses,¹ and after considering the briefs filed by the General Counsel, the Charging Party, and the Respondent I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with offices and places of business within the State of Michigan, including Saginaw (the Respondent's Saginaw facility) has been engaged in the business of providing student transportation. Annually, the Respondent, in conducting its business operations described above, derives gross revenues in excess of \$250,000. During this same period of time, the Respondent purchased and received at its Michigan facilities goods valued in excess of \$5000 directly from points located outside the State of Michigan.

The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

As amended at the hearing paragraph 8 of the complaint al-

¹ In making my findings regarding the credibility of witnesses, I considered their demeanor, the content of the testimony, and the inherent probabilities based on the record as a whole. In certain instances, I credited some but not all, of what the witness said. I note, in this regard, that "nothing is more common in all kinds of judicial decisions than to believe some and not all" of the testimony of a witness. *Jerry Ryce Builders*, 352 NLRB 1262 fn. 2 (2008), citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), revd. on other grounds 340 U.S. 474 (1951). See also *J. Shaw Associates, LLC*, 349 NLRB 939, 939-940 (2007).

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leges that since 1981 through June 2013, the Saginaw School District (School District) recognized the United Steel Workers International Union (USW) and USW, Local 8410 as the collective-bargaining representative of the following employees:

All regular full-time and regular part-time hourly rated bus drivers and bus assistants employed by the Board of Education of the city of Saginaw, but excluding substitutes and temporary drivers and bus assistants, dispatchers, supervisors, confidential employees, and all other employees.

Paragraph 8 of the complaint also alleges that this recognition has been embodied in a series of collective-bargaining agreements with the School District, the most recent of which by its terms was to be effective from August 27, 2010, to August 31, 2012. Paragraph 8 of the complaint further alleges that since June 2013 the USW designated USW, Local 9036 to represent the employees in the unit described above, along with the USW. (GC Exh. 19.)

In his posthearing brief the General Counsel² moves to amend paragraph 9(b) of the complaint to allege "From about February 19, 1981 through June 2013 Local 8410, a USW affiliate and USW were the exclusive collective bargaining representatives of the unit employed by Respondent. Since June 2013, Local 9036, a USW affiliate and USW were the exclusive collective bargaining representatives of the unit employed by Respondent." The General Counsel further moved to amend paragraph 9(c) of the complaint to allege "During the relevant time periods described in paragraph 9(b), USW, Local 8410, and Local 9036, based on Section 9(a) the Act have been the exclusive collective bargaining representatives of the Unit employed by Respondent." (GC brief at 3 fn. 2.) The General Counsel asserts that, as originally pled, paragraphs 9(b) and (c) are inconsistent with the amendment made at the hearing to paragraph 8.³ The General Counsel further contends that the amendment to paragraph 9 conforms to the evidence presented in the case.

The Respondent objected to the amendment to the complaint made at the trial and further objects to the post and complaint amendment. For reasons which I will explain in detail herein, I granted the amendments made at the hearing and I also grant the amendment made in the General Counsel's brief.

The complaint alleges in paragraph 6 that since about June 1, 2012, the Respondent contracted with the School District to provide student transportation services and since that time has continued to provide those services in basically unchanged form and has employed as majority of its employees individuals who were previously employees of the School District. Paragraph 6 of the complaint further alleges that the Respondent is a successor to the School District.

Paragraph 13 of the complaint alleges that on or about May

17, 2012, the Respondent implemented changes in the wages, hours, and other working conditions of unit employees. The complaint also alleges that on August 27, 2012, the Respondent implemented a new employee attendance policy. The complaint alleges that these changes were implemented unilaterally and therefore violate Section 8(a)(5) and (1) of the Act. The complaint also alleges that on or about May 17, 2012, the Respondent bypassed the Union and dealt directly with employees in the Unit in violation of Section 8(a)(5) and (1). The General Counsel's theory regarding the complaint allegations relating to May 17, 2012, is that the Respondent engaged in conduct that made it "perfectly clear" that it planned to retain all of the employees in the unit and therefore had an obligation to initially consult with the employees' bargaining representative before establishing terms and conditions of employment. In support of this theory, the General Counsel relies on inter alia, *NLRB v. Burns International Security Services*, 406 U.S. 272, 294-295 (1972) and *Spruce Up Corp.*, 209 NLRB 194, 195 (1974), enf. mem. 529 F.2d 516 (4th Cir.1975).

The complaint further alleges that the Respondent unreasonably delayed bargaining from May 18, 2012, to October 15, 2012, in violation of Section 8(a)(5) and (1). Finally, the complaint alleges that on about October 1, 2012 the Respondent insisted on the withdrawal of an unfair labor practice charge as a condition to engaging in bargaining in violation of Section 8(a)(5) and (1).

The Respondent admits that it is a successor employer to the School District but denies that it is a "perfectly clear" successor within the meaning of *Burns* and *Spruce Up*, supra, and further denies that it committed any of the alleged unfair labor practices.

The Amendments to the Complaint

Section 102.17 of the Board's Rules and Regulations permits complaint amendments upon terms that may be just. The Board evaluates the following factors in determining whether to grant an amendment to the complaint: (1) whether there was surprise or lack of notice, (2) whether the General Counsel offered a valid excuse for the delay in moving to amend, and (3) whether the matter was fully litigated. *Stagehands Referral Service, LLC*, 347 NLRB 1167, 1171 (2006); *Cab Associates*, 340 NLRB 1391, 1397 (2003).

In the instant case, on July 19, 2013, 5 days prior to the commencement of the trial, the Respondent filed an amended answer denying the portions of the complaint in paragraphs 8 and 9, alleging that Local 9036 was designated representative of the unit employees from 1981 until the present. At the hearing, as noted above, the General Counsel amended paragraph 8 during the case in chief. This amendment was consistent with the evidence presented on this issue. In particular, the collective-bargaining agreement effective August 27, 2010, through August 31, 2012, indicates that it is "between the Board of Education of the City of Saginaw and United Steel Workers, AFL-CIO-CLC, on behalf of Local 8410-01, (hereinafter referred to as the "Union")." (GC Exh. 2.) The signature page of that document reflects that it was executed by representatives of both the United Steel Workers International Union (USW) and Local 8410-01. Before the General Counsel rested, significant

² I have taken administrative notice of the fact that on October 29, 2013, the United States Senate confirmed President Obama's nomination of Richard F. Griffin Jr., to be the Board's General Counsel and that he was sworn in on November 4, 2013.

³ As originally pled, paras. 9(b) and (c) allege that since about June 1, 2012, Local 9036, has been the exclusive bargaining representative of the unit employees.

additional evidence was presented as to how and when the representation of unit employees was transferred by the USW from the jurisdiction of Local 8410 to that of Local 9036. Accordingly, it is clear that the Respondent had a fair opportunity to defend itself against paragraph 8 of the complaint as amended and that it was appropriate to grant the amendment to the complaint.

With respect to the General Counsel's motion to amend paragraph 9 of the complaint contained in his brief, the Respondent contends that it should be denied under the standards of *Stagehands Referral Service* and *Cab Associates*, supra. With regard to the first factor, the amendment made in the General Counsel's brief could hardly be surprising to the Respondent as it merely made the allegations of paragraph 8 and 9 consistent with each other. With respect to the second factor, the General Counsel admits it was an oversight not to have made the amendment to paragraph 9 at the hearing. While it would have been preferable for the General Counsel to have made the amendments to paragraph 9 at the hearing, I do not find that moving to amend paragraph 9 in the brief prejudiced the Respondent as I have carefully considered the Respondent's memorandum in opposition to the General Counsel's motion. Finally, as noted above, the issue of the representative status of the USW, Local 8410 and Local 9036 was extensively litigated at the hearing. Accordingly, I find it appropriate to grant the amendment to paragraph 9 of the complaint.

The Respondent has denied the substantive allegations in the amended complaint regarding the representative status of the USW, Local 8410 and Local 9036.

The Representative Status of the USW, Local 8410 and
Local 9036

Although the complaint as amended alleges that the School District and the USW and Local 8410 have had a collective-bargaining relationship since 1981, the General Counsel produced no evidence regarding the bargaining history prior to 2010. As noted above, the 2010–2012 collective-bargaining agreement is between the School District and the “United Steelworkers, AFL–CIO–CLC on behalf of Local 8410-01, (hereinafter referred to as the “Union”). Also, as noted above, the signature page of collective-bargaining agreement reflects the signatories as the Saginaw Board of Education, the USW, and Local 8410-01. The record establishes that there were approximately 55 employees in the unit.

The Board has held that when an international union and its affiliated local union are signatories to a collective-bargaining agreement, both the international union and its affiliated local are joint representatives of the employees covered by the collective-bargaining agreement. *BASF-Wyandotte Corp.*, 276 NLRB 498, 504–505 (1985). Accordingly, based on the contract between the School District and the USW and Local 8410, I find that the USW and Local 8410 were the joint representatives of the employees in the unit from at least August 27, 2010, until the unit employees were transferred to the jurisdiction of Local 9036 in June 2013.

The USW constitution specifically permits the USW to transfer all or part of the jurisdiction of a local union to another local union (CP Exh. 3). According to the uncontroverted testimony of USW Representative Tonya DeVore, Local 8410 is

an amalgamated local union that represents severed several units. 8410-01 is the unit identifier for the employees in the unit that was employed by the School District. When the Respondent took over the operation of the bus services of the Saginaw public schools in July 2012, the unit employees were no longer public employees. In the fall of 2012, the USW began the process of transferring the unit employees from Local 8410 to Local 9036, which represents both public and private employees. The decision to transfer unit employees from Local 8410 to Local 9036 was based primarily on the fact that the officials of Local 8410 had no experience in preparing the necessary administrative documents required of a union representing private sector employees. Of particular concern to the Local 8410 officials was the LM-2 report that is required to be filed with the U.S. Department of Labor pursuant to the Labor-Management Reporting and Disclosure Act.

According to the uncontroverted and credited testimony of DeVore and Clint Bryant, a current employee of the Respondent,⁴ meetings were held with unit employees in October and November 2012 regarding the transfer of the unit from Local 8410 to Local 9036. At the meeting held in October 2012, approximately 30 employees were present while approximately 25 employees attended the meeting in November. At these meetings DeVore told employees that the officials of Local 8410 had concerns about their ability to fill out the paperwork required of a union representing private sector employees. DeVore further indicated that Local 9036 represented both private sector and public sector employees and she thought that Local 9036 would be a “better fit” for the unit employees since they now worked for a private employer. The employees present at the meetings had no objections to the transfer of their unit from one local union to another.

On May 29, 2013, Michael Bolton, the director of USW District 2, wore a letter to Stan Johnson, the USW secretary-treasurer formally requesting that, pursuant to the USW constitution, the Respondent's unit employees who had been formerly been employed by the School District be transferred to Local 9036. The letter also indicated that DeVore would continue to provide services to the unit employees. The letter further indicated, in relevant part, that:

The reason for the request is that the members in the unit were previously public school workers, and were outsourced to a private sector firm. Amalgamated Local 8410 had no private sector units prior to this change and the requested new unit will be part of an amalgamated local with both private and public units. Also the primary unit of Local 9036 is composed of passenger bus drivers, and the new unit is composed of school bus drivers.

On June 5, 2013, the USW transferred the Respondent unit employees to Local 9036 (CP Exh. 4). On approximately June 5, 2013, DeVore, Bryant, and Jennifer Wirrick, the president of Local 9036 attended a meeting with the unit employees of the

⁴ Bryant was formerly the unit president for Local 8410 and is presently the unit president for Local 9036. The unit president is the highest ranking union official in the bargaining unit.

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Respondent at the Saginaw facility's bus garage. The unit employees were informed that Local 9036 would be their new local and were asked to sign dues checkoff cards for Local 9036. Approximately 43 of the 45 employees present at the meeting signed dues checkoff cards. As of the time of the hearing those checkoff authorizations had not been provided to the Respondent.

As I noted above, the Respondent admits that it is a successor to the School District with regard to bus transportation services and began to bargain with the USW and Local 8410 in October 2012. DeVore is the chairperson of the Union's negotiating team. At a bargaining meeting held in approximately January or February 2013, DeVore notified the Respondent's chief representative, Audrey Adams, that the local union number would be changing because the employees were going from a local union that represented solely public employees to a local union that represented both public and private employees. The Respondent did not indicate any objection to that procedure at the meeting. From June 2013 until the hearing was held in July 2013 there were two additional bargaining meetings. None of the Respondent's representatives present at the meeting raised any objection to the transfer of the unit employees from one local union to another.

It is clear that USW representative DeVore was involved in the affairs of the bargaining unit as it underwent the transition from the School District to the Respondent. She was also deeply involved in the transition of the unit from Local 8410 to Local 9036. In addition, DeVore has been the chairperson of the Union's negotiating team since negotiations began with the Respondent in October 2012, when Local 8410 was the joint representatives of the unit employees and continued in that role after June 5, 2013, when the unit employees were transferred to Local 9036. Such active participation by a USW representative in the affairs of a local union establishes that since June 5, 2013, the USW and Local 9036 have been the joint representatives of the unit employees. *BASF-Wyandotte*, supra at 505.

Based on the foregoing, I find that since at least August 27, 2010, until June 5, 2013, the USW and Local 8410 were the joint representatives of the unit employees. Since June 5, 2013, until the present the USW and Local 9036 have been the joint representatives of the unit. In reaching this finding I rely on the Board's decision in *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143 (2007). In that case, the Board indicated that:

[W]hen there is a union merger or affiliation an employer's obligation to recognize and bargain with the incumbent union continues unless the changes resulting from the merger or affiliation are so significant as to alter the identity of the bargaining representative. Id. at 147.

It is the burden of the party seeking to avoid its bargaining obligation to establish that the merger or affiliation resulted in a change that is "sufficiently dramatic" to alter the union's identity. Id. at 147.

It is clear that in the instant case the employer has not met that burden. Based on the foregoing, there has been substantial continuity in the representation of the unit by the USW and

Local 8410 before the transfer of the unit and the USW and Local 9036 after the transfer of the unit. Accordingly, references to the "Union" in this decision refer to the USW and Local 8410 prior to June 5, 2013, and the USW and Local 9036 after June 5, 2013.

The Respondent's Procedural Defenses

The Respondent contends in its brief that the complaint must be dismissed pursuant to Section 10(b) or because Local 9036 did not represent the unit employees until over 7 months after it filed its charge.

The charge was filed on October 29, 2012, by the "United Steelworkers Local 9036" and alleges in substance that the Respondent was a "Perfectly Clear successor to Saginaw Public Schools" which unilaterally changed terms and conditions of employment; delayed bargaining with the "Union" and conditioned bargaining with the "Union" on the withdrawal of an unfair labor practice charge in violation of Section 8(a)(5) and (1). Listed on the charge was the fact that Local 9036 is affiliated with the "United Steelworkers." The 10(b) period regarding this charge commenced on April 29, 2012.

The fact that the charge was nominally filed by Local 9036 before it became the joint representative of the unit employees along with the USW, is of no significance as it is clear that "any person" may file a charge with the Board. Section 102.09 of the Board's Rules and Regulations; *Apex Investigation & Security Co.*, 382 NLRB 815, 818 (1991).

It is also clear that a charge is not a pleading and does not require the specificity of a complaint. A charge merely initiates a Board investigation to determine whether a complaint should be issued. *NLRB v. Fant Milling Co.*, 360 U.S. 301, 307 (1959). The charge in the instant case notified the Respondent of the substantive allegations set forth above and refers to the "Union." As I set forth above, the "Union" until June 5, 2013, was comprised of the USW and Local 8410 and after June 5, 2013, was comprised of the USW and Local 9036. There has been continuity of representation throughout the entire 10(b) as the USW has always been one of the joint representatives of the unit employees. The transfer of the unit from Local 8410 to Local 9036 did not in any way change the continuity in representation.

It is also clear that a complaint is not restricted to the precise allegations of a charge. Rather, a complaint may allege any matter sufficiently related to or growing out of the charged conduct. *Fant Milling*, supra at 309. As originally issued, all of the substantive allegations of the complaint were within the 6 month time period required by Section 10(b) but only made reference to Local 9036 as the Section 9(a) representative of the unit employees. However, as finally amended, the complaint properly alleged the appropriate 9(a) representative as the USW and Local 8410 until June 2013 and the USW and Local 9036 after June 2013. The specific addition of the USW and Local 8410 as the 9(a) representative during the appropriate time period is closely related to the allegations of the charge under the standards applied in Board's decision in *Redd-I, Inc.* 290 NLRB 1115, 1115-1116 (1988). In this connection, the complaint amendments involved the same legal theory as the charge and arise from the same factual circumstances alleged in the

charge. As I have discussed above in detail, the complaint was amended in a manner that permitted the Respondent to adequately defend itself against the amendments. Based on the foregoing, I find no merit to the procedural defenses raised by the Respondent and will address the merits of the amended complaint.

Whether the Respondent is a "Perfectly Clear" Successor Which Violated Section 8(a)(5) and (1) by Unilaterally Establishing Initial Terms and Conditions of Employment and Directly Dealing with Employees

Facts

Background

The Respondent is headquartered in Cincinnati, Ohio, and is the largest provider of school transportation services in the North America. In the United States the Respondent employs over 59,000 employees and transports approximately 6 million students. In Michigan, the Respondent provides transportation services in 18 school districts and operates approximately 1000 buses.

The July 2011 Meeting and Aftermath

In the summer of 2011 the School District issued a request for proposals (RFP) seeking bids regarding the privatization of its school transportation system. The Respondent and two other entities submitted proposals. In July 2011, the School District conducted an interview with the Respondent regarding its proposal. Representatives of the School District included Dr. Kelley Peatross; the assistant superintendent of schools, Phoebe Wood, the School District's chief financial officer; and Robert Bradley, the School District's then facilities manager. The Respondent's development manager Daniel Kinsley and another manager, Justin Grygiel, attended for the Respondent. At the invitation of Peatross, USW representative DeVore was present at the interview. No unit employees were present at this interview.

Peatross and DeVore testified regarding this meeting on behalf of the General Counsel, while Kinsley and Bradley testified on behalf of the Respondent. For the most part, there was not much of a much variance in the testimony of the witnesses regarding this meeting. Based on a composite of their testimony, I find that Kinsley stated that the Respondent would hire the bargaining unit employees if they met the Respondent's hiring criteria which included an application, an interview, a background check, a drug screen, and some other tests. Kinsley stated that the Respondent would maintain the current wages and planned to raise wages in the future. When Kinsley was asked whether the Respondent would recognize the Union, he indicated that the Respondent would recognize the Union if it hired 51 percent or more of the School District's employees.⁵ Kinsley further indicated that it was the Respondent's intention

to hire a majority of the School District's employees if they met the Respondent's hiring protocols. Kinsley also stated that at other locations the Respondent had hired 80 to 90 percent of the existing unit.

After the meeting, Woods prepared two documents summarizing the proposal made by the Respondent and the two other entities that had submitted proposals (GC Exh. 3 and CP Exh. 2). They are very similar but not identical documents. The summaries were provided to employees by the School District and were made available to the public at Board of Education meetings. Peatross gave a copy of Charging Party Exhibit 2 to DeVore.

Both the General Counsel and the Charging Party contend that these exhibits are probative but I find them to be of minimal value. The documents are Wood's summary of what each entity stated during their individual interviews. The accuracy of the summaries is questionable. For example, with respect to the summary involving the Respondent in General Counsel Exhibit 3, under the heading "Union" the document indicates "Will recognize union." Under the same heading, CP Exh. 2 states "The union will be recognized." Peatross testified on direct examination that the summaries accurately reflected what the Respondent's representatives stated at the meeting (Tr. 358). On cross-examination, however, Peatross testified that with respect to the portion of the summary in GC Exh. 3 that states "Will recognize union" it was her understanding that would occur on the condition of the Respondent hiring a majority of the School District's employees (Tr. 378). As noted above, Peatross also testified that she recalled that the Respondent's representatives stated at the meeting that after hiring the majority of the existing work force, it would recognize the union (Tr. 377). Thus, Peatross' testimony regarding the accuracy of the summary was equivocal and conflicts with her testimony that at the meeting the Kinsley stated that the Respondent would recognize the union if it hired a majority of the School District's employees. In addition, Kinsley testified that the summaries were missing important qualifications on relevant topics. For example, Kinsley testified that with regard to the reference to the recognition of the Union in General Counsel Exhibit 3 the summary was missing the qualifier that he stated at the meeting that the Respondent would recognize the Union if it hired 51 percent or more of the School District's employees (Tr. 474). Since Kinsley's testimony on what he said at the meeting is corroborated by both that of Peatross and Bradley, I find his testimony that the summaries were not entirely accurate to be credible.

Under these circumstances, I find that the summaries prepared by Woods are not complete statements of what the Respondent stated at the meeting. I find these documents to be too unreliable to base any findings on them.

In October 2011, the School District selected the Respondent as a provider of its bus services and the School Board voted to approve a contract. However, Dr. Carleton Jenkins, the School District's superintendent, decided not to proceed with subcontracting bus services at that time. In November 2011, the School District withdrew its RFP and notified the Respondent that it would not proceed with subcontracting bus services during the 2011-2012 school year.

⁵ Kinsley, Bradley, and Peatross all testified that Kinsley answered the question about recognizing the Union in the same manner. DeVore testified that when asked if the Respondent would recognize the union, Kinsley answered "yes" without any further qualification. I do not credit DeVore's testimony on this point as it conflicts with that of Bradley and Peatross, who I view as neutral witnesses.

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The March 2, 2012 Meeting

Pursuant to a new RFP issued by the School District regarding the subcontracting of school bus transportation for the 2012–2013 school year, on February 3, 2012, the Respondent submitted a new proposal to the School District. The Board of Education again approved entering into negotiations with the Respondent for a contract. While those negotiations were ongoing, Peatross arranged for a meeting between the Respondent's representatives and School District employees that was held on March 2, 2012, at the School District's transportation facility. All of the School District's unit employees were invited to attend the meeting and approximately 40 attended. Peatross attended for the School District. Robert Bradley also attended the meeting. At the time of the meeting Bradley was the general manager for Sodexo, which, pursuant to a contract, provided custodial and maintenance services to the School District. Prior to going to work for Sodexo in September 2011, Bradley had been employed by the School District as the operations manager for those functions. Attending for the Respondent were Kinsley and the Respondent's area general manager, Douglas Meek.

Peatross and current unit employees Millie Stidhum-Stewart and Michelle Ezell, testified on behalf of the General Counsel regarding this meeting. Bradley, Meek, and Kinsley testified on behalf of the Respondent.

According to Peatross, the purpose of the meeting was to discuss the transition of the school bus services from the School District to the Respondent and to allow the employees to ask questions they may have. Peatross introduced Kinsley and Meek to the assembled employees. The Respondent's primary spokesman, Meek, spoke about what the employees could expect in the upcoming weeks in anticipation of a final contract being reached between the School District and the Respondent.

Meek testified that he told the employees that they would be receiving an application form at a future meeting if a contract was reached between the Respondent and the school district. He stressed that the application had to be filled out completely. Meek indicated that he and another one of the Respondent's managers would be present to answer questions when the employees receive their application. Meek stated that after the completion of the application and the necessary background checks, applicants would be subject to a preemployment drug screen, a physical examination and receive training. Meek stated that after completion of these requirements the Respondent would offer employment to existing employees who met their criteria.

After Meek's initial presentation, employees were permitted to ask questions. When asked how many employees would be hired, Meek indicated that in a conversion between a public school transportation system and the Respondent's operation, the Respondent typically hired 80 to 90 percent of the existing work force. Meek testified that he told the employees that if the workforce was represented and the Respondent hired 51 percent of the existing work force as its own, the employees would bring their representation with them and a new contract would be negotiated.

When asked about how many hours were going to be guaranteed to employees, Meek responded that the Respondent would use the School District's routing system but that the Respond-

ent did not know how many hours would be worked at that time. He indicated that the Respondent would no more when the routes were established. In response to other questions regarding the conditions employees would work under if hired by the Respondent, Meek stated that those issues would be subject to negotiations.

Kinsley testified that Meek stated that the applications for employment would have to be complete and that employees who applied for work with the Respondent would be subject to a background check, a dexterity test, a drug screen and receive training. According to Kinsley, Meek said that if the Respondent hired 51 percent or more of the current work force, the Respondent would bargain in good faith regarding new terms and conditions of employment. Kinsley further indicated that questions were posed to Meek regarding issues such as paid time off, vacation pay and sick pay and that Meek responded by saying those items would be subject to negotiations.

Bradley, who testified pursuant to a subpoena issued by the Respondent, recalled that employees asked questions about the number of hours they would work. According to Bradley, Meek explained that until the routes were determined, the Respondent would not know the number of hours that would be worked by employees. While Bradley did not recall the specific subjects that were raised by employees, he recalled Meek stating that certain matters would be subject to negotiations.

Peatross testified that in response to a question by an employee, Meek stated that the Respondent would recognize the Union if it hired 50 percent plus one of the School District's employees as its employees. Peatross also recalled that Meek did not make any commitment to the number of hours the employees would work but stated that the Respondent would have to look at the routes in order to determine the hours that would be provided to employees. While Peatross did not recall the specific topics that were raised by employees, she recalled Meek stating that certain subjects would be subject to negotiations.

Stidhum-Stewart testified that Meek was present along at the meeting along with the Respondent's human resources manager Frederick Kellerman. Stidhum-Stewart further testified that "another guy" and a "lady" attended the meeting for the Respondent. According to Stidhum-Stewart, in response to a question from an employee as to whether the Respondent would recognize the Union, Meek responded that the Respondent would recognize the Union if it hired 50 percent plus one of the current employees. Stidhum-Stewart also testified that, in response to questions from employees, Meek said the duties of the unit employees would remain the same as would the wages and benefits.

Michelle Ezell testified that Meek, Kinsley, and Kellerman were at the meeting for the Respondent. Ezell also recalled that Meek responded to questions about recognizing the Union by saying that the Respondent would do so if it hired 50 percent plus one of the current employees. According to Ezell, Meek said that there was going to be a smooth transition and that the Respondent would "honor our contract," go by seniority and that their insurance would be cheaper. Ezell could not recall near the specific issues that were raised by employees.

I find the testimony of Meek to be the most reliable account

of this meeting and I credit the portion of his testimony set forth above. It is detailed and consistent and it is corroborated in important respects by the testimony of Peatross, Kinsley, and Bradley. I do not credit the testimony of Stidhum-Stewart and Ezell to the extent it conflicts with that of Meek. In the first instance, both Stidhum-Stewart and Ezell place Kellerman at this meeting when the record clearly establishes that the first time that Kellerman met with employees occurred on May 17, 2013. The testimony of Stidhum-Stewart and Ezell did not have much detail and their demeanor while testifying reflected a lack of certainty. In addition, the testimony of Stidhum-Stewart and Ezell was not corroborated by the testimony of Peatross, who also testified on behalf of the General Counsel.

The May 16, 2012 Board of Education Meeting

The representatives of the School District and the Respondent agreed on the terms of a transportation services contract in early May 2012. At the Board of Education's regularly scheduled, public May 16, 2012 meeting, one of the items on the agenda was the approval of the terms of the contract between the Respondent and the School District. Prior to the meeting Peatross advised DeVore that the proposed contract was on the agenda. Peatross also advised Kinsley of that fact and invited him to attend the meeting. Kinsley, DeVore, Bryant, and approximately five other bargaining unit employees attended the meeting, along with members of the public.

Bryant, DeVore, and Peatross testified on behalf of the General Counsel regarding this meeting, while Kinsley and Bradley testified for the Respondent.

Bryant testified that at the at the meeting one of the members of the Board of Education asked School District Superintendent Jenkins what the wages of the employees would be if the if the Respondent operated the transportation services. Jenkins referred the question to Bradley who, in turn, referred the question to Kinsley. Kinsley took the podium to answer and stated that employees would maintain their current wages. Another board member asked if the Respondent intended to hire the current employees employed by the School District. Kinsley said that much like the school district, employees would have to go through a background check, a drug screen, and pass a physical. Kinsley stated that if the employees met those prerequisites they would be hired. DeVore asked Kinsley if the Respondent would recognize the Union. Since, according to the rules of the meeting, only board members could ask questions, a board member then asked Kinsley if the Respondent would do so. Kinsley responded that the Respondent would recognize the Union. According to Bryant, Kinsley did not identify any conditions of employment that may change during the meeting.

DeVore testified that when Kinsley was asked by a board member about hiring the School District's employees, he responded that if the employees met the Respondent's hiring practices, it would hire them. He further indicated that the hiring practices consisted of having a commercial driver's license (CDL), undergoing a background check, a drug screen, and a physical. He added that those requirements "would not be a problem." According to DeVore, when Kinsley was asked about wages he stated that "everything would be the same."

Peatross also testified that Kinsley answered questions at the

meeting that were posed by members of the School Board. According to Peatross, Kinsley said that the Respondent would offer positions to the existing employees who satisfied the Respondent's hiring requirements such as background checks and physical exams. In response to a question about the wages that the Respondent would offer, Kinsley replied that the Respondent would hire current district employees at the same rate of pay. When asked if the Respondent would recognize the Union, Peatross testified that Kinsley stated that the Respondent would recognize the Union upon hiring 51 percent of the employees.

Kinsley confirmed that he was asked questions by board members at the meeting. With respect to a question regarding whether the Respondent would recognize the Union, he responded that the Respondent would recognize the Union if it hired 51 percent or more of the existing work force. With regard to the Respondent's hiring process, Kinsley testified that he indicated that employees would have to submit applications, have background checks and drug screens conducted, be interviewed, and perform dexterity tests. When asked what the wages would be, Kinsley stated that the Respondent intended to maintain the wages for the current work force. He denied saying that "everything would remain the same." Kinsley testified that he did not say what terms and conditions would change when the former School District employees became the Respondent's employees because that was not a question he was asked.

Bradley testified that Kinsley was asked a question at the meeting about whether the Respondent would recognize the Union. According to Bradley, Kinsley stated that if the Respondent hired 51 percent of the employees they would have to recognize the Union. When asked whether the Respondent would hire the existing employees, Kinsley answered that they would offer all of the employees a position as long as they completed the process involving the background checks, the physical examination, and drug screens.

I credit the testimony of Kinsley, Peatross, and Bradley to the extent that it conflicts with that of DeVore and Bryant. The testimony of Kinsley, Peatross, and Bradley is mutually corroborative and Peatross and Bradley are neutral witnesses. The demeanor of all three witnesses reflected certainty about what Kinsley said that the meeting and I find their testimony to be more reliable than that of DeVore and Bryant.

Based on the credited testimony, I find that at the May 16, 2012 meeting in response to questions asked by various Board members, Kinsley stated the Respondent would hire School District employees if they submitted applications and met the Respondent's hiring criteria which included a background check, a drug screen, an interview, and dexterity tests. Kinsley also indicated that the Respondent would hire the current School District employees at the same rate of pay. Finally, he indicated that the Respondent would recognize the Union if it hired 51 percent or more of the existing work force.

At this meeting the Board of Education voted to approve the contract between the Respondent and the School District. While the contract provides that "The District and Provider have agreed to the terms of this agreement as of the 16th day of May, 2012" (GC Exh. 17, p. 17) the contract was actually executed by representatives of the School District and the Respondent on

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May 24, 2012, and June 1, 2012, respectively. The contract provides that it is effective from July 1, 2012, through June 30, 2017. The value of the entire contract is \$9,519,420 (GC Exh. 4).

At the conclusion of the School Board meeting, Bryant, DeVore, and four other employees were in the parking lot outside the building. Bryant testified that Kinsley was walking toward them and as he approached the group, Kinsley put his arm around one of the employees in said "don't worry, everything will be fine." According to Bryant, DeVore then asked Kinsley if the Respondent would recognize the Union and Kinsley responded "yes" and "welcome to First Student." DeVore testified that Kinsley approached the group and said "don't worry. Everything will be okay. This is going to be smooth." He added that he understood why employees were hesitant but that everything was going to be okay and added that "everything will be the same." DeVore testified that she asked Kinsley whether the Respondent would recognize the Union and he responded "yes we will, we're Union friendly." He added "We have a master agreement with the Teamsters, it is not a problem."

Bradley and Kinsley also testified regarding this brief meeting in the parking lot. According to Bradley, he and Kinsley walked out of the building together. Bradley testified that as he and Kinsley walked past the group including DeVore and Bryant, DeVore told Kinsley that the company would be required to recognize the Union if it hired 50 percent plus one and not 51 percent of the current work force and that Kinsley should know that. Bradley testified that he kept walking and did not hear anything further.

Kinsley testified that as he and Bradley approached the group including DeVore and Bryant, DeVore told him that his statement about recognizing the Union if it hired 51 percent or more of the employees was incorrect and he should say that the Respondent would recognize the union if it hired 50 percent plus one of the employees. Kinsley acknowledged that DeVore's statement was correct. Kinsley then stated to the group of employees that the Respondent's goal was to hire as many employees as it could that met all of the Respondent's hiring "protocols." He added that if employees met the Respondent's hiring criteria their wages would be maintained and "they shouldn't have anything to worry about in coming to work for our Company." He denied, however, saying that "everything would remain the same."

To the extent that the testimony of Bradley and Kinsley conflicts with that of DeVore and Bryant regarding this brief meeting, I credit the testimony of Bryant and Kinsley. As noted previously, Bradley is an independent witness and his demeanor reflected certainty about how the encounter began. I find Kinsley's version of the conversation to be more plausible than that of Bryant and DeVore. As noted previously I find that Kinsley had indicated at the just concluded Board of Education meeting that the Respondent would recognize the Union if it hired 51 percent of the School District's employees as its employees. I doubt that Kinsley would immediately afterward say that the Respondent would recognize the Union without making any reference to the requirement of hiring a majority of the existing work force. I also note that DeVore acknowledged on cross-examination that her pretrial affidavit did not indicate that

Kinsley told the group of employees that "Everything would stay the same." (Tr. 268.)

The May 17, 2012 Meeting with Employees

On May 17, 2012, the Respondent met with the School District's unit employees at the School District's transportation facility. Present for Respondent were Meek, Kellerman, Kinsley, Char Campbell, a new human resources manager, and John Kiraly, a former School District supervisor whom the Respondent had hired to be its location manager. Almost all of the School District's transportation employees were present. Peatross and Bradley were also present.

Meek briefly discussed the Respondent's operation and management structure. The Respondent then distributed a document, dated May 17, 2012 (GC Exh. 5) to the employees who were present. The opening paragraph of the document indicated:

Welcome to First Student. As you know, First Student has been selected as the student transportation provider for the Saginaw Public Schools. We are looking forward to working with you to serve the community.

With respect to the hiring procedure, the memo stated:

All current Saginaw Public School drivers and monitors who successfully pass the company's hiring criteria will be offered an employment opportunity with First Student. You are not hired and officially considered an employee of First Student until you successfully meet and pass all the requirements listed below and are extended a formal job offer:

- Background checks
- Employment history checks
- Driving history review
- Criminal records checks
- Physical exam
- Drug test
- Physical Performance Dexterity Test (PPDT)
- Completion of training requirements and classroom and behind the wheel evaluations

The memo also stated that employees would be given interviews and employment applications had to be completed and returned by May 23, 2012, for an employee to maintain his or her seniority.

With regard to pay rates, the memo indicated that school bus drivers and monitors who turned in an application by May 23, 2012, would maintain their current rate of pay and that the hourly rate would also apply for field trips and athletic trips. The memo further indicated that they would be paid a "B" hourly rate for nonstudent transportation duties (i.e. attending training, employer school meetings, clerical work, bus washing, etc).⁶ The memo further indicated that employees would be

⁶ The Respondent's August 1, 2012, offer letter to Bryant indicated that his rate of pay would be \$15.23 while driving and \$10 an hour for all nondriving duties (GC Exh. 8).

paid a guarantee of 1½ hours for each a.m. and p.m. shift worked and midday routes would be paid a minimum of one hour. With respect to training, the memo indicated that current School District drivers who complete the Respondent's training program and were hired by it would receive a bonus of \$150 in their initial paycheck. It also indicated that current monitors who completed the Respondent's training program and were hired would receive a bonus of \$75 in their initial paycheck.

The memo stated that all of the Respondent's driver and monitor positions are considered part time and that benefit programs are designed for a part-time work force. The memo also indicates that the Respondent offered medical, dental, and division insurance plans to its employees and that current drivers and monitors serving in the School District who enroll in the medical insurance plan would receive a company-paid contribution of 80 percent towards employee-only coverage.

The memo contained several terms and conditions of employment that differed from those contained in the collective-bargaining agreement between the Union and the School District. Under the collective-bargaining agreement, employees received one hourly wage rate for all of the work they performed regardless of its nature. The pay guarantee was different in that under the collective-bargaining agreement, bus drivers were guaranteed 4.5 hours per day and monitors were guaranteed 4.3 hours per day. Pay for training was also different in that under the collective-bargaining agreement employees were paid their hourly rate for training.

Kellerman reviewed the topics contained in the memo and gave employees an opportunity to ask questions about the information they had received. One of the questions asked was whether the Respondent would recognize the Union. According to Kellerman's uncontroverted testimony, he responded by saying that the Respondent had a neutrality policy toward unions and that if there was an existing union and the Respondent hired 50 percent plus one of the bargaining unit, the union could request recognition. The Respondent also distributed applications for employment to the employees who were present at this meeting.

The Initial Discussions Between the Union and the Respondent

On May 18, 2012, DeVore sent a letter to Kinsley on behalf of the "USW International Union; And Its Affiliated Local #8410-01" requesting recognition and bargaining regarding the Respondent's bargaining unit at the Saginaw public schools (GC Exh. 11). On May 21, 2012, DeVore sent an email to Kinsley and Meek, attaching her May 18 letter and requesting that bargaining begin for the Saginaw unit in late May or June 2012. After not receiving a response to her May 21 email, DeVore contacted Meek by phone within 2 weeks of her email and requested that bargaining begin. Meek responded that he would not be handling negotiations but that Audrey Adams, one of the Respondent's attorneys, would be responsible for the negotiations. DeVore called Adams and spoke to her in early June and requested that the parties establish dates for bargaining. DeVore stated that it was her position that the negotiations should start with the existing contract between the Union and the School District.

Adams indicated that the Respondent was in the process of hiring employees at the Saginaw location and added that she did not know at that point if the Respondent would be legally obligated to recognize the Union. Adams told DeVore that the Respondent's contract with the School District became effective in July and that she would not know anything concrete until after that date. DeVore asked if she could call Adams after July 4 to see where the Respondent was in the hiring process. Adams agreed that DeVore could call her at that time. Adams also indicated that she would be taking maternity leave from approximately mid-August to late November. On June 13, 2012, DeVore sent an email to Adams stating that she would call her after July 4 and attaching the contract between the School District and the Union.

At the local level, after the meeting that the Respondent held with employees on May 17, Bryant introduced himself to Kellerman and informed him that he was the unit president of the local union. Bryant also introduced Union Stewards Ken Berry and Shanta Rowe. Pursuant to an email from Kellerman to Bryant requesting a meeting to discuss seniority issues, on June 14, 2017, Kellerman, Kiraly, Bryant, Berry, and Rowe met to discuss the seniority rankings of employees who held dual roles as bus drivers and monitors. During the meeting the parties discussed the manner in which those employees should be ranked. On June 19, Kellerman sent an email (CP Exh. 10) to Bryant indicating the following:

Thanks for meeting with John Kiraly and me on June 14 to try to come up with a mutual way to handle the seniority rankings for the dual-role assistants/drivers who have to choose whether [they] want to be a driver or a monitor for First Student.

Attached is a preliminary draft of the seniority lists for drivers and monitors with the dual-role folks listed on both. Please review these lists and let me know by tomorrow (Wednesday, June 20) if there are any changes or further discussions necessary. Thereafter, we'll need to get this information out to the dual-role applicants so they can make a choice on their preferences of being a driver or a monitor.

Thanks for your input

After reviewing the list with Berry and Rowe, Bryant faxed it back to Kellerman on June 19. (CP Exh. 11.) The mutually agreed-upon list was used by the Respondent as the seniority list for the 2012-2013 school year.

The Completion of the Respondent's Hiring Process

After the Respondent received completed applications from School District unit employees, it began conducting background checks and interviews. Apparently not all employees were interviewed, however, as Stidhum-Stewart was hired without ever having an interview.

The Respondent began to schedule training for applicants in June 2012. Employees were issued the Respondent's national employee handbook when they began their training. The acknowledgment form employees were required to sign indicates that most employees received their handbooks in mid-June

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2012 (R. Exh. 11).

The Respondent issued letters offering employment (offer letters) to two School District unit employees on June 27, 2012, the third on July 11, 2012, and the remainder on August 1, 2012 (R. Exh. 6). The Respondent sent offer letters to 42 of the approximately 55 unit employees that were employed by the School District. The offer letters indicate the specific rate of pay offered to individual employees. The offer letters issued on August 1 indicate that an employee's "official hire date" was August 6 but that date was contingent upon the completion of the hiring requirements. The Respondent did not consider employees to be actually hired until they signed the offer letter accepting the terms set forth in the letter.

The Respondent began operations for the 2012–2013 school year on August 27, 2012. On that date, all of the employees who had been hired by the Respondent in its Saginaw public school unit attended a "kickoff" meeting on that date. The purpose of this meeting was to prepare employees for the beginning of the school year. As of August 27, 2012, 41 of the 51 employees employed by the Respondent had been employed in the School District's bargaining unit (R. Exh. 12). By August 17, the Respondent had hired 36 of the former School District unit employees and had hired only 2 employees who were not previously employed by the School District. All of the employees hired by August 17 were either bus drivers or monitors,⁷ which are the two unit classifications.

I find that by August 17, 2012, the Respondent had hired a substantial and representative complement of its employees and was therefore, on request, obligated to bargain with the Union as of that date. *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 52–53 (1987); *Sullivan Industries*, 302 NLRB 144 (1991), *enfd.* in relevant part, 957 F. 2d 890 (D.C. Cir. 1992). As I noted at the outset, the Respondent does not deny that it is a successor to the School District for the provision of transportation services but disagrees with the General Counsel and Charging Party that it is a "perfectly clear" successor that had an obligation to bargain with the Union prior to setting initial terms and conditions of employment.

At the August 27, 2012, kickoff meeting the Respondent provided employees with an attendance policy that was to become effective on September 1, 2012 (GC Exh. 10). After the meeting, Kellerman and Kiraly noticed that the policy contained language that did not apply to the Saginaw location. The language was corrected and the Respondent issued a revised policy to employees on September 4, 2012. (R. Exh. 13.) The August 27 policy, as revised on September 4, sets forth a comprehensive attendance policy including the requirements for taking sick leave. It also includes a disciplinary procedure for "chargeable absences." The record establishes that the new attendance policy contained differences from than the School District's attendance policy as set forth in the collective-bargaining agreement with the Union. For example, the sick leave provision contained in article XVI and the leave of absence provision contained in article XVIII of the collective

bargaining agreement are substantially different than the attendance policies set forth in the Respondent's policy.

The Respondent began to provide school bus transportation services to the Saginaw public schools on or about September 4, 2012 pursuant to its unilaterally established terms and conditions of employment.

The Union Again Requests Bargaining

After July 4, 2012, DeVore called Adams several times on the telephone to discuss recognition and bargaining for the Respondent's Saginaw unit. Adams did not answer the calls and DeVore left several voicemail messages requesting that Adams contact her. Adams testified she recalled seeing DeVore's number come up on her telephone caller ID but did not return the calls because the Respondent was still in the hiring process and she had nothing to tell DeVore.

At some point in August, Adams went on maternity leave. After not receiving any response from Adams, on August 29, 2012, DeVore wrote a letter to John Kiraly, the Respondent's location manager for the Saginaw unit. (GC Exh. 14.) In her letter, DeVore indicated that she understood that the Respondent had hired a majority of its existing work force in the Saginaw unit from employees who had previously worked for the School District. The letter again requested that the Respondent recognize the Union and commence bargaining.

Since DeVore had been unsuccessful in reaching Adams, she had asked Bryant to assist her in getting a name from the Respondent as to who would be responsible for the negotiations involving the Saginaw unit. Bryant obtained the name of another one of the Respondent's attorneys Kristen Huening, from Kellerman and passed her name on to DeVore.

On August 30, 2012, DeVore, sent another letter requesting recognition and bargaining to Huening. After not receiving a reply from Huening for approximately 2 weeks, DeVore called Huening. Huening advised DeVore that she would not be handling negotiations as she was an EEOC attorney and would forward the bargaining request to another attorney, Raymond Walther. On September 18, 2012, shortly after obtaining Walther's name, DeVore sent Walther an email asking him to give her a call regarding the Saginaw public school unit. Walther replied by email the same day indicating that he was in negotiations in Georgia and that he would call her when he got back to his office later that week. (GC Exh. 16.) On September 21, Walther sent an email to DeVore indicating that he would be DeVore's contact while Adams was on maternity leave but that Adams would be handling negotiations.

On September 21, 2012, the Union filed a charge in 07–CA–089760 alleging that the Respondent violated Section 8(a)(5) and (1) by refusing to recognize and bargain with the Union. The charge further alleges that the Respondent fail to bargain over initial terms and conditions of employment despite the fact that it was a "perfectly clear" successor (GC Exh. 18).⁸

On September 25, DeVore emailed Walther. Her email indicated that she would like to begin "negotiations as soon as possible and preferably before November when Ms. Adams returns from maternity leave. Is there any way we can begin

⁷ Under the collective-bargaining agreement between the School District and the Union the position of monitor was referred to as a bus assistant.

⁸ This charge was later withdrawn.

negotiations before that?” On the same date, Walther replied by email indicating that he was “booked into November anyway. So it makes the most sense to start negotiations with Audrey once she’s back.”

On October 1, Devore sent Walther an email indicating that the Union would wait until November before beginning negotiations as long as the Respondent maintained the terms and conditions of employment that the unit employees had prior to the Respondent beginning operations. On the same date, Walther replied by email indicating “As you may know, the company has no obligation to assume the terms and conditions of employment from the predecessor’s CBA with the Union. I understand that you filed a ULP charge with the NLRB on this issue. The NLRB has requested my response as they conduct their investigation, and I will comply with that request.” (GC Exh. 16.) Later on October 1, Walther sent DeVore the following email: “I had some time free up in October if you would still like to start negotiations this month. If you’re going to withdraw the ULP charge, I can send you a recognition letter and we can get some dates scheduled. (Of course, if you are not willing to withdraw the ULP charge, then we will not be able to begin negotiations until the Board concludes its investigation.) If you agree we can schedule a couple days the week of October 15. Let me know how you would like to proceed.”

On October 3, Walther sent the following email to DeVore: “I left you another voicemail this morning. Could you please let me know if the Union intends to begin negotiations on October 15, 2012 and drop the pending ULP charge? Thanks.” On October 5, DeVore sent Walther an email indicating that she was disappointed that he was conditioning negotiations on the Union’s withdrawal of the unfair labor practice charge. She further indicated “Of course, the Union wants to bargain. So, if you rescind your demand that the Union withdraw the ULP charge before First Student will bargain, I would be pleased to meet with you during the week of October 15. Walther responded to DeVore’s email on the same date indicating: “Apologies for the confusion, I’m happy to begin negotiations on 10/15 regardless of whether you withdraw the charge. It’s just that I see no point for the charge at this point. The Company has never refused to bargain with you. Which days are you available the week of 10/15.”

Thereafter, the parties agreed to begin negotiations on October 17, 2012. The negotiations that began in October 2012 were ongoing at the time of the hearing but no agreement had been reached by the parties.

Analysis

In *NLRB v. Burns Security Services*, 406 U.S. 272, 294–295 (1972) the Supreme Court stated:

Although a successor employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor, there will be instances in which it is perfectly clear that the new employer plans to retain all of the employees in the unit and in which it will be appropriate to have him initially consult with the employees bargaining representative before he fixes terms.

In *Spruce Up Corp.*, 209 NLRB 194 (1974), *enfd.* on other grounds, 529 F. 516 (4th Cir. 1975) the Board set forth its analysis as to how it would apply the “perfectly clear” exception to the normal rule that a successor employer is free to set initial terms upon which it will hire employees.

In *Spruce Up*, on February 6, 1970, when the union learned that the new employer, Fowler, was likely to take over the operation of the Spruce Up barbershops it requested Fowler to recognize and bargain with it. Fowler refused, contending that he had no employees yet as he anticipated on taking over the barber shops on March 3. When asked about his intentions about hiring barbers, Fowler told the union representatives “all the barbers working will work.” He also told the union representatives what he planned to pay the barbers.

On February 27, Fowler distributed to the barbers at all of the shops individual form letters setting forth the rates of commission he intended to pay, which were different from those paid to the barbers by Spruce Up. The Board found that Fowler’s statements to the employees of the predecessor, Spruce Up, did not operate to forfeit his right to set initial terms of employment.

In so finding, the Board held:

When an employer who has not yet commenced operations announces new terms prior to or simultaneously with his invitation to the previous workforce to accept employment under those terms, we do not think it can be fairly said that the new employer “plans to retain all the employees in the unit,” as that phrase was intended by the Supreme Court. The possibility that the old employees may not enter into an employment relationship with the new employer is a real one as illustrated by the present facts. Many of the former employees here did not desire to be employed by the new employer under the terms set by him—a fact which will often be operative, and which any new employer must realistically anticipate. Since that is so, it is surely not “perfectly clear” to either the employer or to us that he can “plan to retain all the employees in the unit” under such a set of facts.

We concede that the precise meaning and application of the Court’s caveat is not easy to discern. But any interpretation contrary to that which we are adopting here would be subject to abuse, and would, we believe, encourage employer action contrary to the purposes of this Act and lead to results which we feel sure that the Court did not intend to flow from its decision in *Burns*. For an employer desirous of availing himself of the *Burns* right set initial terms would, under any contrary interpretation, have to refrain from commenting favorably at all upon employment prospects of old employees for fear he would therefore forfeit his right to unilaterally set initial terms, a right to which the Supreme Court attaches great importance in *Burns*. And indeed, the more cautious employer would probably be well advised not offer employment to at least some of the old work force under such a decisional precedent. We do not wish—nor do we believe the Court wished—to discourage continuity in employment relationships for such legalistic and artificial considerations. We believe the caveat in *Burns*, therefore, should be restricted to cir-

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cumstances in which the new employer has either actively or, by tacit inference, misled employees into believing they would all be retained without change in their wages, hours or conditions of employment, or at least to circumstances where the new employer, unlike the Respondent here, has failed to clearly announced its intent to establish a new set of conditions prior to inviting former employees to accept employment.

Applying the principles set forth above, I find that the Respondent was not required to negotiate initial terms of employment under *Burns* and *Spruce Up*, and that the Respondent did not violate Section 8(a)(5) and (1) of the Act in this regard as alleged by the General Counsel.

In the instant case, the first contact between the Respondent and the Union occurred in July 2011 at the interview that the School District conducted with the Respondent regarding its proposal to provide transportation services for the 2011–2012 school year. DeVore attended the meeting at the invitation pursuant to an invitation extended by Peatross. At this meeting, the credited testimony establishes Kinsley stated that the Respondent would hire the School District's transportation employees if they met the Response hiring criteria and that the Respondent would maintain the current wages. Kinsley also stated that the Respondent intended to hire a majority of the school district's employees if they met the Respondent's hiring protocol and that the Respondent's policy was to recognize a union if it hired a majority of the current workforce. Kinsley also stated that at other locations, the Respondent had hired 80 to 90 percent of the existing workforce.

Kinsley's statements establish that it was anticipated that the Union would remain the representative of the employees if the Respondent obtained a contract from the School Board. Thus, even though no employees were present at this meeting, I find that since DeVore, a representative of the Union, was present, Kinsley's statements are a communication with employees through their representative. *Marriott Management Services, Inc.*, 318 NLRB 144 fn. 1 (1995).

As noted above, the School District's superintendent decided not to subcontract transportation services for the 2011–2012 school year and notified the Respondent of this fact in November 2011.

After the School District issued another RFP for the 2012–2013 school year, the Respondent submitted a new proposal. In February 2012, negotiations began again between the Respondent and the School District for a contract regarding the provision of transportation services. While these negotiations were ongoing, Peatross arranged for a meeting on March 2, 2012, between representatives of the Respondent and unit employees and approximately 40 unit employees attended the meeting. According to the credited testimony, at this meeting the Respondent, through Meek, notified the employees that they would be receiving an application form at a future meeting if a contract was reached between the Respondent and the School District. Meek indicated that after the completion of the application and a necessary background check, applicants would be subject to a preemployment drug screen, a physical examination and receive training. Meek further stated that after comple-

tion of these requirements the Respondent would offer employment to existing employees who met its criteria.

In response to a question from an employee regarding how many employees would be hired by the Respondent, Meek indicated that in a conversion between a public school transportation system and the Respondent's operation, the Respondent typically hired 80 to 90 percent of the existing work force. Meek further stated that if the employees are represented and the Respondent hired 51 percent of the existing work force as its own, the employees would bring their representation with them and a new contract would be negotiated.

Meek stated that the Respondent did not know how many hours would be guaranteed to employees but that it would know more when the routes were established. In response to questions regarding under what conditions the employees would work if hired by the Respondent, Meek stated that those issues would be subject to negotiations.

At the May 16, 2012, Board of Education meeting which DeVore, Bryant and approximately 5 unit employees attended, the credited testimony establishes that Kinsley stated that the Respondent would hire School District employees if they submitted applications and met the Respondent's hiring criteria which included a background check, a drug screen, an interview, and dexterity tests. Kinsley also indicated that the Respondent would hire the current School District employees at the same rate of pay and that the Respondent would recognize the Union if it hired 51 percent or more of the existing work force.

In the discussion that Kinsley had with DeVore, Bryant and four other unit employees after the Board of Education meeting on May 16, 2012 Kinsley stated that it was the Respondent's goal to hire as many of the School District's employees as it could which met its hiring criteria. Kinsley acknowledged to DeVore that it would be more accurate for him to say that the Respondent would recognize the Union if it hired 50 percent plus one of the existing work force. He also repeated that if employees met the Respondent's hiring criteria their wages would be maintained.

Based on the statements noted above, it is clear that from July 11, 2011, through May 16 2012, the Respondent expressed a willingness to hire a majority of the School districts employees and that if it did so, it would recognize and bargain with the Union. However, the Respondent also indicated that, if it did recognize the Union, a new contract would be negotiated. The Respondent indicated it did not know how many hours would be worked by employees. The Respondent stated that employees would retain their rate of pay but, when asked about issues such as paid time off vacation pay and sick pay, the Respondent indicated those issues would be subject to negotiations. These statements indicate that the Respondent would not be adopting the School District's collective-bargaining agreement and that new working conditions would be implemented. The Respondent stated that employees would be employed at their existing wage rates but beyond that was not specific with respect to the employment conditions it would apply.

On May 17, after the Board of Education voted to approve the contract between the Respondent and the School District, the Respondent clearly and unequivocally announced in writing

the terms and conditions of employment that it was inviting employees to apply under. This memo indicated with specificity the Respondent's initial terms and conditions of employment. With respect to rates of pay, the memo indicated that all current school bus drivers and monitors who returned a completed employment application by May 23 2012 would have their current rate of pay retained and that this rate would apply for field trips and athletic trips. It also indicated, however, that a "B" hourly rate would apply for work performed for nonstudent transportation duties (i.e. attending training, employer school meetings, clerical work bus washing etc.)

This clear and unequivocal expression of the employment terms offered by the Respondent was distributed to employees at a meeting that the School District mandated that all unit employees attend. Employees were permitted to ask questions about the terms and conditions of employment announced in the memo. At this meeting employment applications were made available for all employees who were interested in working for the Respondent under the conditions it had announced.

The Respondent's clear and unequivocal announcement of the conditions upon which it invited employees to apply for jobs with it occurred while the unit employees were still employed by the School District, as it was before the school year ended at the end of June 2012. It also occurred before the contract between the School District and the Respondent had actually been signed and before its effective date of July 1. The May 17 meeting occurred over 3 months before the Respondent would begin to actually provide school transportation services.

Thus, the Respondent clearly and unequivocally announced new terms of employment substantially before it commenced operations. As in *Spruce Up*, the Respondent announced these terms simultaneously with offering employees an application to apply for work under those terms. Under these circumstances, I find that the Respondent did not "either actively or, by tacit inference, mislead employees into believing they would all be retained without change in their wages, hours or conditions of employment" under the standard set forth by the Board in *Spruce Up*, at 195. If employees were unclear about what terms and conditions of employment the Respondent was offering before May 17, 2012, there could be no doubt of what those terms were after the Respondent distributed its May 17 2012 memo. Thus, when employees submitted applications that were handed out at that meeting, they knew in detail the initial terms and conditions of employment that were being offered by the Respondent. After reviewing the applications and conducting background checks and interviews the Respondent offered employment to the first two unit employees on June 27 and did not offer employment to the great majority of the former unit employees until August 1, 2012.

I do not find that the fact that Kellerman and Kiraly met with Bryant and two union stewards in June 2012, and reached an accord in the manner in which seniority would be applied for dual role employees is sufficient to deprive the Respondent of its right under *Burns* and *Spruce Up* to unilaterally set its initial terms of employment. As I have indicated, it was anticipated that the Respondent would recognize the Union. This type of cooperation in the interim period before the Respondent actually commenced operations is both practical and laudable. To use

it as a basis to deprive the Respondent of its right under *Burns* to unilaterally establish conditions of employment would, in my view, discourage continuity in the employment relationship in an artificial manner, a result which the Board clearly indicated a desire to avoid in *Spruce Up*.

My conclusion that the Respondent had a right to unilaterally establish its initial terms and conditions of employment is in accord with the Board's decision in *Banknote Corp. of America*, 315 NLRB 1041 (1994). In that case the Board found that the employer was not a "perfectly clear" successor within the meaning of *Burns* and *Spruce Up*. In that case, the respondent began operations at the facility involved on April 19, 1989. On March 23, 1987, the respondent advised the unions involved that it intended to hire its initial workforce from the employees who were currently employed at the facility. At the same time the respondent indicated it was not making any commitment to recognize the unions or be bound by their collective bargaining agreements. On April 11, the respondent met with union representatives and informed them that it would not honor the collective bargaining agreements they had with the predecessor. The respondent further advised the unions that it intended to have a more flexible operation and that it would cross train employees so they would be able to perform various functions. The Respondent told the unions that the health benefits presently in effect would continue for a period of 60 days. No other terms and conditions of employment were discussed.

On April 16, the Respondent interviewed job applicants from the predecessor employees. Three employees testified regarding those interviews at the trial. At these interviews the respondent mentioned flexibility and that employees may be asked to do different things but no more specific information was revealed about benefits except that one employee was told that her salary and benefits would remain the same. On April 19 the Respondent began operations with 50 employees, all of whom had worked for the predecessor.

The Board found that simultaneous with its stated intention to retain the predecessor's employees, the respondent conveyed the message that it would not be adopting the predecessor's terms and conditions of employment and thus put the employees on notice that it would be making changes in the employment terms of the predecessor. The Board also noted that specific anticipated changes were communicated to the unions and to three of the prospective employees at the interviews. Under these circumstances, the Board concluded that the respondent was not a "perfectly clear" successor under *Burns* and that its bargaining obligation did not attach until it hired the employees on April 19. *Banknote Corp. of America*, at 1043.

In *Specialty Envelope Co.*, 321 NLRB 828, 831-832 (1996) the Board found that Specialty was not a "perfectly clear" successor under *Burns* and *Spruce Up*. In that case, before extending job offers to the predecessor's employees, Specialty distributed application packets in which it announced the terms and conditions of employment that would be in effect when it began operations. Specialty thereby informed applicants that if they applied and were hired there would be different terms and conditions of employment. In the instant case, as noted above, employees were similarly given new terms and conditions of employment in writing when they were given applications.

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I also find the Board's decisions in *Bekins Moving & Storage Co., LLC*, 330 NLRB 761 (2000); *Planned Building Services Inc.*, 318 NLRB 1049 (1995); and *Marriott Management Services, Inc.*, 318 NLRB 144 (1995), to be supportive of my decision in this case. In each of these cases, as here, the successor employer made clear to the employees of the predecessor that they were being hired under different conditions of employment. Thus, in each of these cases the Board found that the successor was entitled to unilaterally establish initial terms and conditions of employment.

I find the cases relied on by the General Counsel and the Charging Party in support of their claim that the Respondent is a "perfectly clear" successor to be distinguishable. In *Elf Atochem North America, Inc.*, 339 NLRB 796 (2003), prior to the respondent commencing operations in June 1998, on January 27, 1998, it informed the employees that it would provide employment to all of the existing work force of the predecessor dedicated to performing work for AtoHaas. The Respondent also indicated that it would recognize employee seniority and would provide employees with an equivalent salary and a comparable health, welfare and benefits package, including a pension plan, a savings plan and vacation benefits. In addition, on March 17, 1998, the respondent informed the union in a letter that it would keep the predecessor's collective bargaining agreement in effect until the parties negotiated a replacement contract.

In the instant case, the Respondent clearly and unequivocally indicated to employees in writing its initial terms and conditions of employment before they applied for positions with the Respondent. In addition, the Respondent never indicated that the terms and conditions of the School District contract would be applied until a new agreement was reached. Rather, the Respondent made it clear that it would not apply the terms of that contract.

In *DuPont Dow Elastomers LLC*, 332 NLRB 1071 (2000), the Board found that DDE was a "perfectly clear" successor. In that case, on November 15, 1995, DDE announced to the unions representing unit employees at the predecessor DuPont's Louisville and Chambers Works facilities that it intended to offer employment to all incumbent employees at both plants under conditions that would be announced on November 30. On November 30, DDE notified the unions that although it declined to honor their contracts with the predecessor, it would maintain the employees' wages and benefits under those contracts, only adding a bonus program called success sharing. In mid-December 1995, DDE held a series of meetings with incumbent employees explaining in detail the terms of its offers. There was no indication of changes other than the addition of the success sharing plan. On January 2, 1996, DDE tendered unconditional offers of hire under those terms. Under these conditions, the Board found that by November 30 the DDE had indicated that it intended to retain its predecessor's employees at both facilities under the same terms and conditions of employment, except for the success sharing plan, thus leading employees to believe that they would be employed on substantially the same basis as before. In the instant case, as noted above, the Respondent clearly indicated in writing what its initial terms would be before employees applied to work for it.

This factor also distinguishes the instant case from *Hilton's Environmental, Inc.*, 320 NLRB 437 (1995), and *Canteen Co.*, 317 NLRB 1052 (1995), *enfd.* 103 F.2d 1355 (7th Cir. 1997).

In *Fremont Ford*, 289 NLRB 1290, 1296-1297 (1988), the Board found that the Respondent failed to clearly announce a new set of conditions prior to inviting former employees to accept employment. In so finding the Board noted that the respondent "embarked on a misinformation campaign" and instructed supervisors to give false and misleading information to the predecessor's employees who inquired about the working conditions that the respondent intended to impose. It was not until after the hiring process began that the Respondent first informed the predecessor's employees that there would be significantly different employment conditions. In addition, the respondent engaged in other unfair labor practices that demonstrated an unlawful plan to defeat the union's status as the employees bargaining representative. The Board emphasized in its finding that any uncertainty as to what the respondent would have done, absent its unlawful purpose, must be resolved against it since it could not be permitted to benefit from its unlawful conduct. In the instant case, the employees were clearly and unequivocally informed of the terms and conditions that the Respondent was offering before they submitted applications and the hiring process began. In addition, there is no evidence that the Respondent engaged in any unlawful conduct during the period of time it was hiring its workforce that was designed to defeat the Union's status as the bargaining representative.

Finally, the instant case is also distinguishable from *Road & Rail Services Inc.*, 348 NLRB 1160 (2006). There, the issue was whether the respondent violated Section 8(a)(3), (2), and (1) of the Act by recognizing the union and entering into a collective bargaining agreement with it prior to the hiring of the respondent's workforce and the commencement of its operations. In that case, the respondent did not unilaterally set initial terms, but rather negotiated an agreement with the union which was in effect at the time it commenced operations and employees reported to work. Thus, unlike the instant case, *Road & Rail Services* did not involve the issue of whether the employees continued employment was contingent on their acceptance of a successor's unilateral implementation of the initial conditions of employment.

On the basis of the foregoing, I find that the Respondent was not a "perfectly clear" successor within the meaning of *Burns and Spruce Up* and thus was privileged to unilaterally establish its initial terms and conditions of employment on May 17, 2012. Thus, I find that the Respondent did not violate Section 8(a)(5) and (1) of the Act by failing to bargain with the Union prior to the implementation of those terms of conditions of employment, nor did it engage in unlawful direct dealing. Accordingly, I shall dismiss those allegations in the complaint.

Whether the Respondent Violated Section 8(a)(5) and (1) by
Unilaterally Implementing an Attendance Policy on
August 27, 2012

Paragraph 14 of the complaint alleges that on or about August 27, 2012, the Respondent unilaterally implemented a new employee attendance policy in violation of Section 8(a)(5) and (1).

As set forth above, on August 27, 2012, the Respondent issued a comprehensive attendance policy to employees which included a disciplinary procedure for "chargeable" absences. On September 4, the Respondent issued a revised policy to employees regarding attendance. These policies were implemented without giving notice to or bargaining with the Union and contained substantial and material differences from the attendance policies set forth in the expired collective-bargaining agreement between the Union and the School District.

The Board has long held that attendance policies are mandatory subjects of bargaining. *Production Plated Plastics Inc.*, 254 NLRB 560 (1981); *Harris-Teeter Super Markets, Inc.*, 293 NLRB 743 (1989).

As I have noted above, on May 16, 2012, the School Board voted to approve the contract between the School District and the Respondent. On May 17, 2012, Respondent informed the unit employees of its initial terms and conditions of employment and invited the unit employees to apply for positions with it. On May 18, 2012, and May 21, 2012, the Union submitted written demands for recognition and bargaining to the Respondent. DeVore diligently continued to assert the Union's request for recognition and bargaining in her June telephone conversations with Adams. After July 1 DeVore called Adams several times to discuss the Union's outstanding request for recognition and bargaining but Adams did not return her phone calls. On August 27 and 30 the Union again submitted written demands for recognition and bargaining to the Respondent.

By the time the Union made its initial demand for bargaining on May 18, it was apparent that there was a substantial likelihood that the Respondent would hire the majority of its employees from the School District's workforce. The Respondent's hiring efforts after May 17 were focused on the hiring of these former employees.

Under these circumstances, I find that the Union made a viable demand for recognition and bargaining on May 18 which was continuing in nature. *Fall River Dyeing Corp. v. NLRB*, supra at 54; *Fremont Ford*, supra at 1295. By August 17, 2012, the Respondent had hired a substantial and representative complement of its work force and the overwhelming majority of those employees had been employed by the School District. Accordingly, the Respondent had an obligation to recognize and bargain with the Union as of August 17, 2012. By unilaterally implementing an attendance policy on August 27, 2012 and September 4, 2012, without giving notice to or bargaining with the Union, the Respondent violated Section 8(a)(5) and (1) of the Act. *Production Plated Plastics, Inc.*, supra.

Whether the Respondent Delayed Bargaining in Violation of Section 8(a)(5) and (1)

As set forth above, the Union, through DeVore, began to demand recognition and bargaining from the Respondent on May 18 and that demand was continuing in nature. When DeVore spoke to the Respondent's attorney Adams by telephone in early June and requested that the Respondent recognize the Union and begin bargaining, Adams replied that it was premature as the Respondent had only begun hiring employees and that the Respondent's contract with the School District was not

effective until July 1. Adams and DeVore agreed to wait until after July 4 to again discuss the Union's request for recognition and bargaining. After July 4 DeVore made several phone calls to Adams but Adams never returned the calls. During this period the Respondent continued to hire employees and, by August 17, 2013, had hired a substantial and representative complement of its workforce, the majority of which were former unit employees of the School District. Finally, on August 29, after not receiving any response from Adams, DeVore wrote another letter requesting bargaining in recognition to the Respondent's Saginaw location manager, Kiraly. On August 30 DeVore sent another such letter to Huening, another one of the Respondent's attorneys.

Kiraly never responded to DeVore. DeVore called Huening after not receiving a response to her letter for approximately 2 weeks, to discuss the Union's request for recognition and bargaining. Huening responded by telling DeVore that negotiations were not her responsibility as she was an EEOC attorney. Huening gave DeVore the name of yet another attorney for the Respondent, Walther. After getting Walther's name, DeVore immediately sent him an email on September 18 asking him to contact her regarding the Saginaw unit. Walther replied on the same date indicating that he was in negotiations and telling DeVore that he would contact her the following week.

On September 21, Walther sent an email to DeVore indicating he was the Union's contact person while Adams was on maternity leave but that Adams would be handling negotiations. On September 25 DeVore replied to Walther indicating she would like to start negotiations as soon as possible. On the same date Walther replied saying that he was booked into November and it would make the most sense to start negotiations when Adams returned.

On October 1, DeVore sent an email to Walther indicating that the Union would wait until November if the Respondent maintained the terms and conditions of employment that were contained in the collective-bargaining agreement between the Union and the School District. On October 1, Walther replied indicating that the Respondent had no obligation to assume the School District's collective-bargaining agreement with the Union. He also indicated that he understood that an unfair labor practice charge had been filed. On October 1, Walther sent an email to DeVore indicating that he could meet to start negotiations in October if the Union was willing to withdraw the unfair labor practice charge. He further indicated if the Union was not going to withdraw the charge, then the Respondent would not be able to begin negotiations until the Board concluded its investigation.

On October 3, Walther sent DeVore an email asking if the Union intended to begin negotiations on October 15 and drop the pending unfair labor practice charge. On October 5, DeVore replied by an email indicating that if the Respondent would rescind its demand to withdraw the unfair labor practice charge before the Respondent would bargain, the Union would meet with the Respondent during the week of October 15. Finally, on October 5, Walther sent DeVore an email indicating that he would begin negotiations on October 15 regardless of whether the union withdrew the charge. By agreement the parties began negotiations on October 17.

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As the foregoing demonstrates, the Union earnestly pursued its right to bargain with the Respondent as a successor to the School District since May 18, the day after the Board of Education approved the contract between the School District and the Respondent. The Respondent attained a substantial and representative complement of its workforce on August 17, a majority of which were unit employees under the collective-bargaining agreement between the School District and the Union. It was on that date that the Respondent was obligated to recognize and bargain with the Union. Rather than responding on May 17, the Respondent treated the outstanding request to bargain in a cavalier fashion. Adams never responded to DeVore's repeated calls after July 1. Kiraly never responded to DeVore's request. Huening, after initially not responding for 2 weeks, essentially told DeVore that negotiations were not her job and passed on Walther's name to DeVore. Walther initially wanted to have the Union wait for Adams return from her maternity leave in November. When DeVore requested that negotiations start sooner, Walther then sought to have the Union withdraw its pending unfair labor practice charge before finally agreeing to bargain the week of October 15. Thus, negotiations did not start until 2 months after August 17, the date the Respondent was clearly obligated to commence negotiations.

In my view none of the reasons advanced by the Respondent for the delay are sufficient to excuse its failure to bargain during this period. The Respondent is a large corporation with many resources, rather than devoting these resources to timely responding to the Union's request for bargaining, its representatives either did not respond to the request or gave insufficient reasons for the failure to meet and bargain. While it was treating the Union's demand for recognition and bargaining in a dilatory fashion, the Respondent implemented an unlawful unilateral change in an important mandatory subject of bargaining, rules regarding absences and the disciplinary process attending those rules.

In *Fruehauf Trailer Services, Inc.*, 335 NLRB 393 (2001), the Board found that a delay in bargaining for almost 3 months without good reason constituted an unlawful delay in negotiations. In the context of the instant case, I find the 2 month delay that occurred herein is sufficient to find that the Respondent unreasonably delayed negotiations in violation of Section 8(a)(5) and (1).

Whether the Respondent Insisted as a Condition of Meeting that the Union Withdraw an Unfair Labor Practice Charge in Violation of Section 8(a)(5) and (1)

As noted above, on October 1, Walther sent DeVore an email indicating that he could schedule bargaining the week of October 15 if the Union would withdraw the then pending unfair labor practice charge in 07-CA-089760. He further indicated that if the Union was not willing to withdraw the charge, the Respondent would not be able to begin negotiations until the Board finished its investigation of the charge. On October 5, DeVore sent Walther an email indicating that she was disappointed that he was conditioning negotiations on the Union's withdrawal of the unfair labor practice charge. She reiterated the Union's desire to bargain and further stated that if the Respondent rescinded its demand that the Union withdraw the

charge before it would bargain with the Union, the Union would be willing to meet during the week of October 15. After receiving this email, on October 5 Walther indicated that he would begin negotiations on October 15 regardless of whether the Union withdrew the charge. Negotiations began on the agreed-upon date of October 17.

The Respondent's October 1 proposal that the Union withdraw its unfair labor practice charge is a nonmandatory subject of bargaining. *Carlson Porsche Audi, Inc.*, 266 NLRB 141, 149-150 (1983); *Patrick & Co.*, 248 NLRB 390, 393 fn. 5 (1980).

In the instant case, while Walther proposed on October 1 that the unfair labor practice charge be withdrawn as a condition to begin negotiations, on October 5 Walther dropped that proposal and indicated that the Respondent would be willing to begin negotiations on October 15, regardless of whether the union withdraw the charge. It is permissible to propose a nonmandatory subject of bargaining such as the withdrawal of an unfair labor practice charge. What is impermissible is to insist to impasse that a charge be withdrawn before an agreement is reached, or as in this case, negotiations commence.

It is clear that in the instant case the Respondent did not insist to impasse that the Union withdraw the information practice charges condition to commencing negotiations. As noted above, I find that the interjection of this issue caused some additional brief delay before negotiations actually commenced. However, since the Respondent raised the issue only briefly did not insist to impasse on it I find it does not rise to the level of a separate unfair labor practice. *Carlson Porsche Audi*, supra at 149-150. Accordingly, I shall dismiss this allegation in the complaint

CONCLUSIONS OF LAW

1. At least from August 27, 2010, to June 5, 2013, The United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO and Local 8410, The United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO (the Union) was the exclusive bargaining representative in the following appropriate unit (the Unit):

All full-time and regular part-time drivers and monitors employed by First Student Inc., A Division of First Group America at its Saginaw, Michigan location, but excluding substitutes and temporary drivers and monitors, dispatchers, confidential employees and supervisors as defined in the Act.

2. Since June 5, 2013, The United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO and Local 9036, The United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO, has been the exclusive bargaining representative of the employees in the Unit.

3. By unilaterally implementing attendance policies on August 27, 2012, and September 4, 2012, the Respondent violated Section 8(a)(5) and (1) of the Act.

4. By delaying bargaining from August 17, 2012, to October 17, 2012, the Respondent has violated Section 8(a)(5) and (1) of the Act.

5. The above unfair labor practices affect commerce within the meaning of Section 2 (2), (6), and (7) of the Act.

6. The Respondent has not otherwise violated the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally implementing attendance policies on August 27, 2012, and September 4, 2012, I shall order the Respondent to rescind those rules and bargain with the Union about any future implementation of an attendance policy. I shall also order that the Respondent restore the status quo which existed at the time of its unlawful unilateral action by rescinding any disciplinary actions resulting from the implementation of its attendance policies. *Production Plated Plastics, Inc.* supra. Accordingly, if any employees have been discharged pursuant to these attendance policies, I shall order the Respondent to offer them full and immediate reinstatement to their former jobs, or if those jobs no longer exist to substantially equivalent positions without prejudice to their seniority or any other rights and privileges previously enjoyed. For any employees who have been discharged or disciplined pursuant to these rules I shall order the Respondent to make them whole for any loss of earnings and other benefits suffered as a result of the application of the unlawful rules to them. Backpay shall be computed in the manner set forth in *F.W. Woolworth Co.*, 90 NLRB 289 (1950); with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987); compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Since the Respondent violated Section 8(a)(5) and (1) of the Act by delaying bargaining, I shall order the Respondent to meet with the Union, upon request, promptly and at reasonable times and intervals.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, First Student, Inc. A Division of First Group America, Saginaw, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Implementing attendance policies without bargaining with the Union.

(b) Refusing to meet promptly with the Union, on request, for purposes of collective bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed

them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the August 27, 2012, and September 4, 2012, attendance policies and, upon request, bargain with the Union regarding the implementation of any future attendance policy. The appropriate unit is:

All full-time and regular part-time drivers and monitors employed by First Student Inc., A Division of First Group America at its Saginaw, Michigan location, but excluding substitutes and temporary drivers and monitors, dispatchers, confidential employees and supervisors as defined in the Act

(b) Within 14 days of the date of the Board's Order, expunge from the personnel files of employees all references to disciplinary actions which resulted from the failure to comply with the Respondent's unilaterally implemented attendance policies and within 3 days thereafter notify the employees in writing that this has been done and that the discipline will not be used against them in any way.

(c) Within 14 days from the date of the Board's order, offer any employees discharged pursuant to the unilaterally imposed attendance policies, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make whole employees for any loss of earnings and other benefits suffered by them as a result of discipline imposed against them pursuant to the unilaterally implemented attendance policies, in the manner set forth in the remedy section of the decision.

(e) On request, meet and bargain with the Union and do so promptly and regularly at reasonable times and intervals.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Saginaw, Michigan copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other

⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 17, 2012.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. December 13, 2013.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT implement attendance policies without bargaining with the United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO and Local 9036, The United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO (the Union)

WE WILL NOT refuse to meet promptly with the Union, on request, for purposes of collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the August 27, 2012, and September 4,

2012 attendance policies that we unilaterally implemented and WE WILL, upon request, bargain with the Union regarding the implementation of any future attendance policy. The appropriate unit is:

All full-time and regular part-time drivers and monitors employed by First Student Inc., A Division of First Group America at its Saginaw, Michigan location, but excluding substitutes and temporary drivers and monitors, dispatchers, confidential employees and supervisors as defined in the Act.

WE WILL, within 14 days of the Board's Order, expunge from the personnel files of employees all references to disciplinary actions which resulted from the failure to comply with the Respondent's unilaterally implemented attendance policies and within 3 days thereafter notify the employees in writing that this has been done and that the discipline will not be used against them in any way.

WE WILL within 14 days from the date of the Board's Order, offer any employees discharged pursuant to the unilaterally imposed attendance policies, immediate and full reinstatement to their former jobs or, if those jobs no longer exists, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole employees for any loss of earnings and other benefits suffered by them as a result of discipline imposed against them pursuant to the unilaterally implemented attendance policies, with interest.

WE WILL, on request, meet and bargain with the Union and do so promptly and regularly at reasonable times and intervals.

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The Administrative Law Judge's decision can be found at www.nlr.gov/case/07-CA-092212 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington DC 20570, or by calling (202) 273-1940.



TAB 13

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7**

FIRST STUDENT, INC., a division of
FIRST GROUP AMERICA,

Respondent,

and

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION
(USW) and its LOCAL UNION 9036,

Charging Party.

Case 07-CA-092212

**RESPONDENT FIRST STUDENT, INC.'S MOTION FOR
RECONSIDERATION OF BOARD DECISION**

Pursuant to Section 102.48(c)(1) of the Board's Rules and Regulations, Respondent First Student, Inc. respectfully moves that the Board reconsider the Decision and Order (the "Decision") issued in this case on February 6, 2018 (366 NLRB No. 13).¹ As the extraordinary circumstances warranting reconsideration of the Decision, First Student submits that, in the following respects, the Decision fails to adhere to controlling judicial and statutory authority, departs from longstanding Board precedent without rational explanation, is not supported by substantial evidence in the record as a whole and, if allowed to stand, will cause a manifest injustice and deny First Student due process:

¹ Respondent is referred to herein as "First Student" or the "Company"; Charging Party is referred to as the "USW" or the "Union"; the Saginaw, Michigan School District is referred to as the "District"; the Administrative Law Judge is referred to as the "ALJ"; and references to the Board's Decision are abbreviated "BD p. ____."

1. The finding First Student became a perfectly clear successor on March 2, 2012 (BD pp.4-5) – over two months before the District’s Board of Education voted to enter into a contract outsourcing bus transportation services for District students to First Student, three months before First Student and the District entered into a contract, four months before the contract’s effective date, over five months before First Student became a successor based upon its hiring of District applicants as a majority of its initial workforce, and just shy of six months before First Student commenced operations under the contract (Tr. 384-386, 388, 402-403, 462-465, 515-516; REX 12; GCX 17)² – conflicts with, and deviates without rational explanation from, Board precedent indicating that a prospective successor cannot become a perfectly clear successor based upon communications it makes to the employees of the prospective predecessor or their union representative prior to entering into a contract to acquire or assume the prospective predecessor’s business operations. See, e.g., *Morris Healthcare & Rehab Center, LLC*, 348 NLRB 1360, 1367 (2006) (successor found to have become perfectly clear successor after taking applications from, interviewing and hiring predecessor’s employees without informing them of conditions under which they would work, not when successor’s CEO, prior to entering into agreement with county board to operate nursing home, made statements at a public board meeting to the effect that he “wanted a smooth transition and planned to rehire most of the nursing home’s staff”); *Hilton Environmental*, 320 NLRB 437 (1995) (food service contractor became perfectly clear successor after awarded, in place of another contractor, food service contract at army base, based upon assurances it gave predecessor’s employees, the day after it solicited them to apply for positions, that they would all have jobs, not when it made pre-contract

² References to the transcript of the hearing are abbreviated, “Tr. ___”; references to the General Counsel’s exhibits are abbreviated, “GCX ___”; and references to the Company’s exhibits are abbreviated, “REX ___”.

communications with employees indicating it intended to retain them if awarded contract); *Fremont Ford*, 289 NLRB 1290, 1993-1994 (1988) (rejecting alternative theory of liability on which ALJ relied, Board found that successor, a car dealership, could not be held to be a successor before it had a written agreement to acquire the dealership and that demand for recognition made by union before successor was legally or functionally operational did not trigger duty to bargain); *Spitzer Akron, Inc.*, 219 NLRB 20, 22-23 (1975), *enfd.* 540 F.2d 841 (6th Cir. 1976), *cert. den.* 429 U.S. 1040 (1977) (assurances given by successor to predecessor's employees on day it entered into purchase agreement with predecessor that they would all be retained, not pre-contract assurances given weeks earlier, held to make successor a perfectly clear successor).

2. The Decision and the Board's recent decisions in *Creative Visions Resources, LLC*, 364 NLRB No. 91, *enfd.* 872 F.3d 274 (5th Cir. 2017), *Nexeo Solutions*, 364 NLRB No. 44 (2016), and *Adams & Associates, Inc.*, 393 NLRB No. 193 (2016), *enfd.* 871 F.3d 358 (5th Cir. 2017) effectively overrule, *sub silencio*, and otherwise cannot be reconciled with, the Board's decision in *Spruce Up Corp.*, 209 NLRB 194 (1974), *enfd.* *per curiam*, 529 F.2d 516 (4th Cir. 1975), in several respects, including:

- (a) The decisions expand, without rational explanation and in conflict with other Board precedent, *Spruce Up*'s test for assessing the narrow perfectly clear successor exception established in the Supreme Court's decision in *NLRB v. Burns Int'l Security Services*, 406 U.S. 272 (1972) by finding an irrevocable bargaining obligation immediately attaches when a prospective successor, in advance of making offers of employment to the employees of the predecessor, displays an intent to employ the employees without making it clear that the employees' employment will be on different terms than those under which they worked for the predecessor (BD p.3; 209 NLRB at 195);
- (b) The decisions transform the test established in *Spruce Up* from its policy-based focus on whether a successor induced a predecessor's employees to forego other employment opportunities by actively or tacitly misleading them they would be retained without change to their terms and conditions

of employment to one that locks-in perfectly clear status upon a successor's displaying, in its initial communication to the employees or their union, an intent to employ the employees in a way that does not make it clear employment terms will be different, regardless of whether the successor subsequently communicates new terms to the employees prior to their hire and whether the timing of that communication had a material effect on the employees' opportunity seek other employment (BD p.4; 209 NLRB at 195); and

- (c) The decisions' interpretation of the law as requiring an employer, to avoid perfectly clear successor status, to clearly announce its intent to establish a new set of conditions prior to, or simultaneous with, its expression of intent to retain the predecessor's employees conflicts with one of the policy reasons the Board gave in *Spruce Up* for its interpretation of the perfectly clear caveat of *Burns*, i.e., encouraging favorable comments on the employment prospects of the predecessor's employees without fear of forfeiting the right unilaterally to set initial terms. (BD p.3; 209 NLRB at 195).

3. The finding that, despite telling employees at the March 2, 2012, meeting with the District's employees (a) the employees would be required, to receive an offer of employment, to submit an application for employment, and satisfy the Company's hiring criteria, including passing a background check, a physical examination, a drug screen, and training, (b) if it hired 51% of the employees, the Company would recognize the Union and negotiate a new collective-bargaining agreement, (c) the Company would not be able to provide information on guaranteed hours until routes were established, and (d) other terms and conditions of employment would be subject to negotiation, First Student failed to communicate sufficient information to the employees to establish it intended to implement new terms and conditions of employment (BD pp.3-4) conflicts and cannot be reconciled with established Board precedent. See, e.g., *Planned Building Services, Inc.*, 318 NLRB 1049 (1995) (successor that informed predecessor's employees that it would pay them the same wages as the predecessor, but that their benefits would not be the same, was not a perfectly clear successor and had the right to set initial terms of employment); *Marriott Management Services, Inc.*, 318 NLRB 144 (1995) (verbal statement by

successor to predecessor's employees' union representative that, "although the Respondent would recognize [the union], it would not adopt the extant collective-bargaining agreement" held to amount to clear announcement of successor's "intent to establish a new set of conditions prior to inviting former employees to accept employment"; *Banknote Corp. of America*, 315 NLRB 1041, 1043 (1994), *enfd.* 84 F.3d 637 (2d Cir. 1996) (letter from successor to 11 unions that represented employees of predecessor, informing them that it "intended to attempt to hire its initial work force from the employees currently working at the [facility], but that it was not making a commitment to recognize the Unions or be bound by their collective-bargaining agreements with [the predecessor]" held to have "effectively announced that [the successor] would be instituting new terms and conditions of employment," and therefore successor was not a perfectly clear successor); *Henry M. Hald High School Assn.*, 213 NLRB 415 (1974) (successor that gave assurances to predecessor's employees that it would employ them, but added that the terms under which it would do so had not yet been established, held not be a perfectly clear successor and to have had right to later establish initial employment terms).

4. The findings that a perfectly clear successor is not required to adopt its predecessor's collective-bargaining agreement but only to maintain the predecessor's status quo until it bargains to an agreement or impasse and that, as such, the statements of First Student at the March 2, 2012, meeting with the District's employees that the ALJ found indicated the Company would not be adopting the District's collective-bargaining agreement and new working conditions would be implemented were ineffective to avoid perfectly clear successor status (BD p.3):

- (a) Conflict with the Supreme Court's holding in *Burns* that a successor is not legally obligated to adopt its predecessor's collective-bargaining agreement inasmuch as the status quo a perfectly clear successor is required to maintain consists of the terms of the predecessor's collective-

bargaining agreement and perfectly clear successor status, therefore, effectively obligates a successor to adopt its predecessor's labor agreement (406 U.S. at 294); and

- (b) Are at odds with the statutory reasons the Supreme Court gave in *Burns* for holding a successor is not obligated to adopt its predecessor's collective-bargaining agreement, as well as the policy reasons the Court gave, which are captured in its explanation that "A potential employer may be willing to take over a moribund business only if it can make changes in corporate structure, composition of the labor force, work, location, task assignment and nature of supervision. Saddling such an employer with the terms and conditions of employment contained in the old collective-bargaining contract may make these changes impossible and may discourage and inhibit the transfer of capital (406 U.S. at 287-88).

5. The findings that (a) the ALJ misapplied established precedent in determining First Student's announcement of new employment terms at its meeting with the District's employees on May 17, 2012, less than a day after the Board of Education voted to approve entering into a contract with the Company and over three months before the Company commenced operations, constituted a timely exercise of the Company's right unilaterally to set initial terms and conditions of employment and that (b) the Board has consistently held a subsequent announcement of new terms, even one made before formal offers of employment are issued, will not vitiate a prior expression of an intent to retain the predecessor's employees that does not make it clear employment will be conditioned on acceptance of new terms (BD p.4):

- (a) Are the product of the Board's failure to adhere to established precedent mandating a finding that the information First Student conveyed to the District's employees at the meeting on March 2, 2012, placed the employees on notice of the Company's intent to establish new terms and conditions of employment, and thus precluded a finding First Student is a perfectly clear successor (*Planned Building Services, Inc.*, 318 NLRB 1049 (1995); *Marriott Management Services, Inc.*, 318 NLRB 144 (1995); *Banknote Corp. of America*, 315 NLRB 1041, 1043 (1994), enf'd. 84 F.3d 637 (2d Cir. 1996); *Henry M. Hald High School Assn.*, 213 NLRB 415 (1974));
- (b) Are based upon the erroneous determinations in *Creative Visions* and *Nexeo*, ones that misinterpret and effectively overrule *Spruce Up*, allowing a finding of perfectly clear successor status based upon a prospective

successor's expression of an intent, prior to extending offers of employment, to retain a predecessor's employees without spelling out new employment terms on which employment will be conditioned; and

- (c) Erroneously overlook that (1) as of May 17, 2012, the employees were still employees of the District, they would remain so for several more weeks and in some cases longer, and they knew First Student would not commence operations until the end of August 2012, on the eve of the next school year, and (2) the Company extended all but two of its offers of employment to District employees on and after August 1, 2012 (Tr. 388; REX 6, 12), providing the employees, if they had any issues with the employment terms the Company announced at the meeting on May 17, over three months' time to search for other employment before an offer lapsed, which ensured no employees were misled when they received their offer and decided whether to accept it and, as such, precluded a finding under the *Spruce Up* test that First Student is a perfectly clear successor.

6. The findings that (a) a prospective successor, like First Student was on March 2, 2012, may become a perfectly clear successor before it enters into a contract to acquire or assume a prospective predecessor's business operations, (b) a prospective successor may become a perfectly clear successor prior to extending offers of employment to the employees of a prospective predecessor, by displaying an intent to employ the employees without making it clear the employees' employment will be on different terms than those under which they worked for the predecessor, (c) a prospective successor, like First Student, does not insulate itself from being deemed a perfectly clear successor by communicating to the employees of a prospective successor in its first communication to them that they must meet the successor's hiring criteria to receive an offer of employment, it will recognize the employees' union representative if the employees make up a majority of its workforce but will not assume the collective-bargaining agreement of the predecessor and instead will negotiate a new agreement, and various terms about which employees ask are either to be determined or will be subject to negotiation, and (d) perfectly clear successor status, once triggered, cannot be vitiated by a subsequent, pre-hire communication to employees of new employment terms, regardless of how close in time the

communication is made to the initial communication and how much time employees have after learning of the new terms to decide whether to accept employment with the successor (BD pp3-5), individually and collectively expand the narrow perfectly clear successor exception established in *Burns* and erode the test for determining perfectly clear successor status adopted in *Spruce Up*, to the point that perfectly clear successor status is at risk of no longer being an exception and instead becoming the rule, with the result being that dressed as a status quo remedy, many a successor will be required effectively to adopt its predecessor's collective-bargaining agreement, in contravention of the holding in *Burns*. See *S&F Market Street Healthcare LLC v. NLRB*, 570 F.3d 354, 361 (D.C. Cir. 2009) ("In this case, the Board presumed the predecessor's terms and conditions must remain in effect unless the successor employer specifically announces it will change "core" terms and conditions. Thus does the exception in *Burns* swallow the rule in *Burns*.").

7. The findings that First Student became a perfectly clear successor on March 2, 2012, and violated Section 8(a)(5) and (1) by announcing and implementing unilateral changes in employees' terms and conditions of employment on and after May 17, 2012 (BD p.5), are contrary to the Supreme Court's interpretation of the Act in *Burns* and *Fall River Dyeing v. NLRB*, 482 U.S. 27, 53 (1987), that a successor's bargaining obligation attaches when it has hired a substantial and representative complement of employees, and the union has made a demand for recognition.

8. The alternative finding that First Student became a perfectly clear successor based upon statements it made at the May 16, 2012, meeting with the Board of Education in response to questions from the Board of Education (BD p.5, n.13) conflicts with Board precedent finding that perfectly clear status turns upon communications made to and intended for the predecessor's

employees or their union, not ones made to and intended for the predecessor's representatives or decision makers. See, e.g., *Grenada Stamping & Assembly*, 351 NLRB 1152 (2007), enfd. 322 Fed. Appx. 404 (5th Cir. 2009), *cert. den.*, 558 U.S. 990 (2009) (successor that communicated to predecessor's employees that all of them would be retained, without mentioning intent to establish any new employment terms, held to be a perfectly clear successor); *Morris Healthcare & Rehabilitation Center*, 348 NLRB 1360 (2006); *Ridgewell's, Inc.*, 334 NLRB 37 (2001), enfd. 38 Fed. Appx. 29 (D.C. Cir. 2002) (successor's announcement of intent to employ predecessor's employees as independent contractors found to put the employees on notice that initial employment terms would be different, leading to holding that successor's unilateral establishment of new terms prior to commencing operations was lawful); *Resco Products, Inc.*, 331 NLRB 1546 (2000) (successor that informed predecessor's employees that to work for it the employees would have to waive claims for accrued vacation, and that they would, in return, receive increased pension benefits, held not to be a perfectly clear successor and to have had the right unilaterally to set initial employment terms); *Bekins Moving & Storage*, 330 NLRB 761 (2000) (successor that conditioned hiring of predecessor's employees on their acceptance of new employment terms held not to be a perfectly clear successor); *Pioneer Concrete of Arkansas, Inc.*, 327 NLRB 311 (1998) (successor that informed predecessor's employees of changes in working conditions before hiring them held not to be a perfectly clear successor); *Hilton Environmental*, 320 NLRB 437 (1995) (successor's informing predecessor's employees that it intended to hire all of them found to establish that successor planned to retain employees without changing their terms of employment, resulting in successor's being held to be a perfectly clear successor); *Planned Building Services, Inc.*, 318 NLRB 1049 (1995); *Banknote Corp. of America*, 315 NLRB 1041 (1994), enfd. 84 F.3d 637 (2d Cir. 1996); *Boeing Co.*, 214 NLRB 541

(1974), enfd. 595 F.2d 664 (D.C. Cir. 1978) (successor that expressed intent from outset to hire predecessor's employees at lower wages and benefits than they received under predecessor's labor agreement held not to be a perfectly clear successor); *Henry M. Hald High School Assn.*, 213 NLRB 415 (1974); *Jerry's Finer Foods*, 210 NLRB 52 (1974) (successor that offered predecessor's employees employment on terms less advantageous than those of predecessor held not to be a perfectly clear successor).

9. The Decision, because it effectively overrules *Spruce Up*, conflicts with the Board's longstanding tradition of not exercising its power to overrule precedent without the concurrence of a three-member majority of the Board. See, e.g., *Hacienda Hotel, Inc.*, 355 NLRB 742, 743 (2010) (Chairman Liebman and Member Pearce concurring); *DaimlerChrysler Corp.*, 344 NLRB 1324 fn. 1 (2005); *Tradesmen International*, 338 NLRB 460 (2002); *Chicago Truck Drivers Local 101 (Bake-Line Products)*, 329 NLRB 247, 254 (1999).

10. The remedy for which the Decision provides is punitive in nature, amounts to a penalty and violates Sections 8(d) and 10(c) of the Act, judicial precedent, and First Student's due process rights, to the extent the remedy requires First Student to: retroactively restore the terms and conditions of employment established by the District; rescind the unilateral changes First Student made to those terms and conditions; make unit employees whole, with interest, for any losses they sustained as a result of the unilateral changes; remit all payments owed to any benefit funds; and not make any changes to terms and conditions of unit employees' employment without first bargaining in good faith with the USW to an agreement or impasse. In particular, the order's imposition on First Student of the substantive terms of the District's collective-bargaining agreement with the USW conflicts with the Supreme Court's holdings in *Burns* and *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27 (1987), that a predecessor's

contractual obligations do not apply to successors that inherit a duty to recognize and bargain with the predecessor's union, and violates Section 8(d)'s prohibition on the Board's imposing any term of an agreement on parties to a collective-bargaining relationship. The order also departs from the legal principle that, to avoid a penalty, the appropriate remedy in a case like this is an order imposing the terms of the predecessor on the successor only for a period that would have, in the circumstances presented, allowed a reasonable time for the parties to negotiate to an agreement or impasse, and establishing as terms after that date those to which the evidence shows the parties would have most likely agreed or the successor would have implemented upon impasse. *See, e.g., Capital Cleaning Contractors, Inc. v. NLRB*, 147 F.3d 999, 1011 (D.C. Cir. 1998); *Armco, Inc. v. NLRB*, 832 F.2d 357 (6th Cir. 1988); *Kallman v. NLRB*, 640 F.2d 1094, 1103 (9th Cir. 1981). The remedy also overlooks undisputed evidence establishing that, shortly after commencing operations, First Student and the USW entered into collective-bargaining negotiations.

For all the foregoing reasons, and those set out in the opening, answering and reply briefs the Company filed with the Board, the post-hearing brief the Company filed with the ALJ, and the Company's other filings and submissions in this case, all of which are incorporated herein by reference, First Student respectfully submits that the Board should grant this Motion for Reconsideration, reconsider and vacate its February 6, 2018, Decision and Order, and issue a decision and order holding that the Company is not a perfectly clear successor and dismissing the complaint allegations alleging that it is and those dependent upon those allegations for the violations alleged.

Dated: March 6, 2018

Respectfully submitted,

/s/ David A. Kadela

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CERTIFICATE OF SERVICE

I certify that the foregoing *Respondent First Student, Inc.'s Motion for Reconsideration of Board Decision* was electronically filed on this 6th day of March 2018, through the Board's website, is available for viewing and downloading from the Board's website, and will be sent by means allowed under the Board's Rules and Regulations to the following parties:

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TAB 14

Saginaw, MI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIRST STUDENT INC., A DIVISION
OF FIRST GROUP AMERICA

and

Case 07-CA-092212

LOCAL 9036, UNITED STEEL, PAPER
AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION (USW) AFL-CIO

ORDER DENYING MOTION FOR RECONSIDERATION¹

The Respondent's motion for reconsideration of the Board's Decision and Order reported at 366 NLRB No. 13 (2018) is denied. The Respondent has not identified any material error or demonstrated extraordinary circumstances warranting reconsideration under Section 102.48(c)(1) of the Board's Rules and Regulations.²

Dated, Washington, D.C., March 29, 2018

Marvin E. Kaplan, Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. Member Emanuel took no part in the consideration of this motion or the underlying decision.

² Chairman Kaplan adheres to his partial dissent in the underlying decision, but he agrees that the Respondent has not shown extraordinary circumstances warranting reconsideration of that decision.